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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 7, 1999 at 9:00 am.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Rules and Regulations

Federal Register
Vol. 64, No. 217
Wednesday, November 10, 1999

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1126 and 1137

[DA–99–08 and DA–99–07]

Milk in the Texas and Eastern Colorado Marketing Areas; Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule; Suspension of rule.

SUMMARY: This document suspends certain provisions of the Texas and Eastern Colorado Federal milk marketing orders (Orders 126 and 137) from the day after publication in the **Federal Register** until implementation of Federal order reform.

The suspensions have been in effect for both orders for some time, and were expected to become unnecessary under the provisions of the final rule establishing the consolidated Southwest and Central orders under Federal Milk Order Reform.

EFFECTIVE DATE: November 11, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address: clifford.carman@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Proposed Suspension (Texas): Issued September 15, 1999; published September 21, 1999 (64 FR 51083).

Notice of Proposed Suspension (Eastern Colorado): Issued September 13, 1999; published September 20, 1999 (64 FR 50777).

The Department is issuing this final rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of May 1999, the milk of 1,314 producers was pooled on the Texas Federal milk order. Of these producers, 812 producers were below the 326,000-pound production guideline and are considered small businesses. During May, there were 12 handlers operating 21 pool plants under the Texas order. Four of these handlers would be considered small businesses.

For the month of June 1999, the milk of 203 producers was pooled on the Eastern Colorado milk order. Of these producers, 105 were below the 326,000-pound production guideline and are considered small businesses. For June 1999, there were eight handlers operating pool plants under the Eastern Colorado milk order. Of these handlers, five are considered small businesses.

This rule suspends portions of the pool plant and producer milk definitions under the Texas order. The suspension lessens the regulatory impact of the order on certain milk handlers and tends to assure that dairy farmers will have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

In addition, this rule suspends portions of the producer definition under the Eastern Colorado order, making it easier for a cooperative association to qualify milk for pooling under the order. The suspension lessens the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the orders regulating the handling of milk in the Texas and Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on September 20, 1999 (64 FR 50777) concerning a proposed suspension of certain provisions of the Eastern Colorado order, and on September 21, 1999 (64 FR 51083) concerning a proposed suspension of certain provisions of the Texas order. Interested persons were afforded opportunity to file written data, views and arguments

thereon. No comments on either proposed suspension were received.

After consideration of all relevant material, including the proposals in the notices and other available information, it is hereby found and determined that from the day after publication of this rule in the **Federal Register** until implementation of Federal order reform, the following provisions of the Texas and Eastern Colorado orders do not tend to effectuate the declared policy of the Act:

1. In § 1126.7(d) introductory text, the words ''during the months of February through July'' and the words ''under paragraph (b) or (c) of this section''.

2. In § 1126.7(e) introductory text, the words ''and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested''.

3. In § 1126.13(e)(1), the words ''and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant''.

4. In § 1126.13, paragraph (e)(2).

5. In § 1126.13(e)(3), the sentence ''The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;''

6. In § 1137.12(a)(2), the words ''from whom at least three deliveries of milk are received during the month at a distributing pool plant''; and in the second sentence ''30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of'', and the word ''distributing''.

Statement of Consideration

Suspension of the provisions for an indefinite period (until implementation of Federal order reform) is necessary because implementation of the 11 consolidated orders under Federal order reform has been delayed by judicial action. The Final Rule containing the 11 consolidated orders was issued August 23, 1999, and published September 1, 1999 (64 FR 47898). A Delay of Effective Date rule was issued September 30, 1999, and published October 5, 1999 (64 FR 53885).

For the Texas order, this rule reinstates a suspension that expired July 31, 1999, of portions of the pool plant and producer milk definitions under the Texas order. The rule will be in effect from the day after publication of the suspension in the **Federal Register** until the implementation of Federal order reform is completed. The action suspends: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the diversion limitation applicable to cooperative associations; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order provides for regulating, as a supply plant, a plant that each month ships a sufficient percentage of its receipts to distributing plants. The order sets the shipping standard at 15 percent of the plant's milk receipts during August and December and 50 percent of the plant's receipts during September through November and January. In addition, the order provides that a plant that is pooled as a supply plant during each of the immediately preceding months of September through January may be pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested action would suspend these performance standards, but only for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also permits a cooperative association plant located in the marketing area to be a pool plant if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants, and the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. This action suspends the 60 percent delivery standard for plants operated by a cooperative association and removes the diversion limitations applicable to a cooperative association and to the operator of a pool plant.

The order also specifies that some milk of each producer must be physically received at a pool plant in order for any of the producer's milk to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for the remainder to be eligible for diversion. This rule suspends these requirements.

The reinstatement of the suspension was requested by DFA, a cooperative association that represents a substantial number of dairy farmers who supply the Texas market. The cooperative stated that marketing conditions have not changed materially since the provisions were initially suspended, prior to 1990, and therefore should be suspended until restructuring of the Federal order program is implemented as mandated in the 1996 Farm Bill.

The cooperative stated that the reinstatement of the suspension is necessary to assure that dairy farmers who have historically supplied the Texas market will have their milk priced under the Texas order. In addition, DFA maintains that the suspension will provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market. No comments opposing the suspension were received.

Implementation of the consolidated Southwest order, which contains provisions that would accommodate the market's current conditions, was to have taken place on October 1, 1999. Implementation of that final rule has been delayed by judicial action, and continued suspension of the Order 126 provision is necessary to prevent uneconomical and inefficient movements of milk and to ensure that producers historically associated with the markets will continue to have their milk pooled under the order.

Accordingly, the suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the Texas marketing area will continue to benefit from pooling and pricing under the order.

For the Eastern Colorado order, this rule suspends a portion of the producer definition to enable a cooperative association to more easily qualify milk

for pooling under the order until implementation of Federal Order Reform. The language suspended requires the milk of cooperative association members to ''touch base'' at pool distributing plants at least 3 times per month to be eligible for diversion. In addition, language limiting the quantity of milk diverted to nonpool plants by cooperative associations to 30 percent in the months of March through July and December, and to 20 percent in other months of the quantity received at pool distributing plants is suspended so that the effective limit on diversions becomes 50 percent of the total milk pooled by cooperatives.

Continuation of the Eastern Colorado suspension that expired on August 31, 1999, was requested by DFA, a cooperative association which represents nearly all of the dairy farmers who supply the Eastern Colorado market. DFA contended that milk from some producers is required every day of the month in order to meet market demands, while milk from some other producers is required most days of the month and milk from a few producers is required only a few days each month to meet market demands. DFA asserted that with the suspension in place the market can be served in the most efficient manner possible because milk required by the market only a few days each month can maintain association with the market without being required to be delivered to pool distributing plants each month. DFA projected that, without the suspension, inefficient and costly movements of milk would have to be made to maintain the pool status of producers who historically have supplied the market. No comments opposing the suspension were received.

Implementation of the consolidated Central order, which contains provisions that would accommodate the market's current conditions, was to have taken place on October 1, 1999. Implementation of that final rule has been delayed by judicial action, and continued suspension of the Order 137 provision is necessary to prevent uneconomical and inefficient movements of milk and to ensure that producers historically associated with the markets will continue to have their milk pooled under the order.

Accordingly, the suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the Eastern Colorado marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing areas, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the markets without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Parts 1126 and 1137

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1126 and 1137 are amended as follows for the period from the day after publication of this rule in the **Federal Register** until implementation of Federal order reform.

1. The authority citation for 7 CFR Parts 1126 and 1137 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1126—MILK IN THE TEXAS MARKETING AREA

§ 1126.7 [Suspended in part]

2. In § 1126.7(d) introductory text, the words ''during the months of February through July'' and the words ''under paragraph (b) or (c) of this section'' are suspended.

3. In § 1126.7(e) introductory text, the words ''and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested'' are suspended.

§ 1126.13 [Suspended in part]

4. In § 1126.13(e)(1), the words ''and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant'' are suspended.

5. In § 1126.13, paragraph (e)(2) is suspended in its entirety.

6. In § 1126.13(e)(3), the sentence ''The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;'' is suspended.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

§ 1137.12 [Suspended in part]

7. In § 1137.12(a)(1), the words ''from whom at least three deliveries of milk are received during the month at a distributing pool plant''; and in the second sentence ''30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of'', and the word ''distributing'' are suspended.

Dated: November 3, 1999.

F.Tracy Schonrock,

Acting Deputy Administrator, Dairy Programs.

[FR Doc. 99–29317 Filed 11–9–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1131 and 1138

[DA–99–05 and DA–99–09]

Milk in the Central Arizona and New Mexico-West Texas Marketing Areas; Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments; suspension.

SUMMARY: This document suspends certain provisions of the Central Arizona (Order 131) and New Mexico-West Texas (Order 138) Federal milk marketing orders from the day after publication in the **Federal Register** until implementation of Federal order reform.

The suspensions have been in effect for both orders for periods beginning in 1995 in Central Arizona and 1993 in New Mexico-West Texas at the request of cooperatives representing nearly all of the producers in Order 131 and most

of the producers in Order 138, and were expected to become unnecessary under the provisions of the final rule establishing the Arizona-Las Vegas and Southwest orders under Federal Milk Order Reform.

DATES: *Effective date:* November 11, 1999.

COMMENTS: Comments are due by January 10, 2000.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance, unofficial copies of such comments may be faxed to (202)690–0552 or e-mailed to OFB—FMMO—Comments@usda.gov. Reference should be made to the title of the action and docket number.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address clifford.carman@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Proposed Suspension (Central Arizona): Issued July 9, 1999; published July 15, 1999 (64 FR 38144).

Suspension of Certain Provisions (Central Arizona): Issued September 13, 1999; published September 20, 1999 (64 FR 50748).

The Department is issuing this interim final rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of September 1999, 101 dairy farmers were producers under Order 131. Of these producers seven were considered small businesses. For the same month, five handlers were regulated under Order 131. Three of these handlers were considered small businesses.

Eighty-nine dairy farmers were producers under Order 138 for the month of May 1999. Twenty-six of these producers were considered small businesses. Three handlers operating five pool plants were regulated under Order 138 during the month of May 1999. One of these handlers was considered a small business.

For the Central Arizona order, this interim final rule suspends the requirement that a cooperative association ship at least 50 percent of its receipts to other handler's pool plants to maintain the pool status of a manufacturing plant operated by the cooperative. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under Order 131 and thereby receive the benefits that accrue from such pricing. This rule will not result in any additional regulatory burden on handlers in the Central Arizona marketing area since this provision has been suspended for much of the time since April 1995.

For Order 138, this rule suspends: (1) The requirement that milk diverted to a nonpool plant be considered a receipt at the distributing plant from which it was diverted; (2) the requirement that a cooperative association deliver at least 35 percent of its milk to pool distributing plants in order to pool a plant that the cooperative operates which is located in the marketing area and is neither a distributing plant nor a supply plant; (3) the requirement that a producer deliver one day's production to a pool plant during the months of September through January to be eligible to be diverted to a nonpool plant; (4) the provision that limits a cooperative's diversions to nonpool plants to an amount equal to the milk it caused to be delivered to and physically received at pool plants during the month; and (5) the provision that excludes from the pool, milk diverted from a pool plant to the extent that the diverted milk would cause the plant to lose its status as a pool plant. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under Order 138 and thereby receive the benefits that accrue from such pricing. This rule will not result in any additional regulatory burden on handlers in the New Mexico-West Texas marketing area since most of the provisions suspended by this action have been suspended since 1993.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Central Arizona and New Mexico-West Texas marketing areas.

After consideration of all relevant material, it is hereby found and determined that from the day after publication of this rule in the **Federal Register** until implementation of Federal order reform, the following provisions of the Central Arizona and New Mexico-West Texas orders do not tend to effectuate the declared policy of the Act:

1. In § 1131.7(c), the words ''50 percent or more of'', ''(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk

actually received at such plant)'', and ''or the previous 12-month period ending with the current month''.

2. In § 1138.7(a)(1), the words ''including producer milk diverted from the plant''.

3. In § 1138.7(c) introductory text, the words ''35 percent or more of the producer''.

4. In § 1138.13, paragraphs (d)(1), (2), and (5).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, by the 60th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in Dairy Programs during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

This rule continues suspension of certain provisions of the Central Arizona and New Mexico-West Texas Federal milk orders until implementation of Federal order reform. For Central Arizona, the suspension removes the requirement that a cooperative association operating a manufacturing plant in the marketing area must ship at least 50 percent of its milk supply during the current month or for the 12-month period ending with the current month to other handlers' pool plants to maintain the pool status of its manufacturing plant.

Suspension of the requirement for an indefinite period (until implementation of Federal order reform) is necessary because implementation of the 11 consolidated orders under Federal order reform has been delayed by judicial action. The Final Rule containing the 11 consolidated orders was issued August 23, 1999, and published September 1, 1999 (64 FR 47898). A Delay of Effective Date rule was issued September 30, 1999, and published October 5, 1999 (64 FR 53885).

Continued suspension of the Order 131 provision was requested by United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market. UDA stated that the pool status of its manufacturing plant is threatened if the suspension is not reinstated, and that the same marketing conditions that have warranted the suspension of the provision during the past four years still exist. UDA maintained that members who increased their milk production to meet projected demand of fluid handlers for distribution into Mexico continue to suffer the adverse impact of the collapse of the Mexican peso. Absent continuation of the suspension, UDA projects that costly and inefficient movements of milk would have to be made to maintain the pool status of producers who have historically supplied the market and to prevent disorderly marketing in the Central Arizona marketing area.

A review of current marketing conditions in the Central Arizona marketing area indicates that, absent continuation of the suspension, the pool plant status of UDA's manufacturing plant will not be maintained. Thus, costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the market and to prevent disorderly marketing in the Central Arizona marketing area. Therefore, the suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the Central Arizona marketing area will continue to benefit from pooling and pricing under the order. In addition, suspension of these provisions until implementation of Federal order reform will ensure that disorderly marketing conditions that may result from these provisions do not negatively impact producers in the future as these provisions have been modified in the Federal order reform regulatory language.

For Order 138, the suspension removes the requirement that milk diverted to a nonpool plant be considered a receipt at the distributing plant from which it was diverted, that a cooperative must deliver at least 35 percent of its milk to pool distributing plants in order to pool a plant that the cooperative operates which is located in the marketing area and is neither a distributing plant nor a supply plant, that a producer must deliver one day's production to a pool plant during the months of September through January to be eligible to be diverted to a nonpool plant, that a cooperative association's diversions to nonpool plants be limited to an amount equal to the milk the cooperative causes to be delivered to and physically received at pool plants during the month, and that milk diverted from a pool plant be excluded from pool milk to the extent that it would cause the plant to lose its status as a pool plant.

Continued suspension of the New Mexico-West Texas provisions was requested by Dairy Farmers of America, Inc. (DFA), a cooperative association that represents the largest volume of milk marketed under Order 138. The cooperative stated that marketing conditions have not changed since the provisions were suspended in 1993 and therefore the suspension should be continued until implementation of the consolidated Southwest order under Federal order reform since the provisions of the consolidated order reflect current industry needs. Implementation of that final rule has been delayed by judicial action, and continued suspension of the Order 138 provisions is necessary to prevent uneconomical and inefficient movements of milk and to ensure that producers historically associated with the markets will continue to have their milk pooled under the order.

A review of current marketing conditions in the New Mexico-West Texas marketing area indicates that, absent continuation of the suspension, costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the market and to prevent disorderly marketing in the New Mexico-West Texas marketing area. Therefore, the suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the New Mexico-West Texas marketing area will continue to benefit from pooling and pricing under the order. In addition, suspension of these provisions until implementation of Federal order reform will ensure that disorderly marketing conditions that may result from these provisions do not negatively impact producers in the future, as these provisions have been modified in the Federal order reform regulatory language.

This action imposes no additional reporting or recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information and reporting requirements and duplication.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Accordingly, it is appropriate to suspend the aforesaid provisions from October 1, 1999, until implementation of the consolidated Arizona-Las Vegas

and Southwest Federal milk orders under Federal order reform.

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:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing areas, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) This interim final rule provides a 60-day comment period, and all comments will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Parts 1131 and 1138

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1131 and 1138 are amended as follows for the period of one day following publication of this rule in the **Federal Register** until implementation of Federal order reform:

1. The authority citation for 7 CFR Parts 1131 and 1138 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

§ 1131.7 [Suspended in part]

2. In § 1131.7(c), the words ''50 percent or more of'', ''(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)'', and ''or the previous 12-month period ending with the current month'' are suspended.

PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA

§ 1138.7 [Suspended in part]

3. In § 1138.7(a)(1), the words ''including producer milk diverted from the plant'' are suspended;

4. In § 1138.7(c) introductory text, the words ''35 percent or more of the producer'' are suspended.

§ 1138.13 [Suspended in part]

5. In § 1138.13, paragraphs (d)(1), (2), and (5) are suspended.

Dated: November 3, 1999.

F. Tracy Schonrock,

Acting Deputy Administrator, Dairy Programs.

[FR Doc. 99–29318 Filed 11–9–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 99–79]

Foreign Locomotives and Railroad Equipment in International Traffic; Technical Amendment

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: In accordance with Customs policy of periodically reviewing its regulations to ensure that they are consistent, this document makes a minor technical amendment to the Customs Regulations regarding entry requirements for foreign locomotives and railroad equipment that are brought into the United States in international traffic.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Office of Regulations and Rulings, (202–927–2320).

SUPPLEMENTARY INFORMATION:

Background

Section 322, Tariff Act of 1930, as amended (19 U.S.C. 1322), provides that vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the Customs laws, including the requirement of entry, to such an extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.

In this regard, § 10.41(a), Customs Regulations (19 CFR 10.41(a)), states that locomotives and other railroad equipment, as well as trucks, buses, taxicabs, and other vehicles used in international traffic are subject to the treatment provided in part 123, Customs Regulations (19 CFR part 123).

In particular, § 123.12(a) and (b) describes the circumstances under which foreign locomotives or other railroad equipment may be admitted to the United States without the requirement of an entry; and § 123.14(c) likewise describes the circumstances under which foreign-based trucks, buses and taxicabs may be admitted to the United States without the requirement of an entry.

Against this backdrop, § 10.41(d) prescribes, in pertinent part, that any foreign-owned vehicle brought into the United States for the purpose of carrying passengers or merchandise domestically for hire or as an element of a commercial transaction, except as provided at § 123.14(c), would be subject to treatment as an importation of merchandise from a foreign country and an entry would be required for such vehicle.

The citation in § 10.41(d) to § 123.14(c) covers foreign trucks, buses and taxicabs. However, there is no reference to § 123.12(a) and (b), as there also should properly be in § 10.41(d), concerning foreign locomotives and railroad equipment.

Accordingly, consistent with § 10.41(a), § 10.41(d) is changed to make clear that foreign-owned vehicles include locomotives and railroad equipment, as well as trucks, busses and taxicabs. In addition, a reference to § 123.12 (a) and (b) is added to § 10.41(d) to reflect the existing conditions under which foreign locomotives and railway equipment may be admitted to the U.S. without the requirement of a Customs entry.

Furthermore, section 681 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182; December 8, 1993) added a provision to the Harmonized Tariff Schedule of the United States (HTSUS) exempting from entry railway locomotives classified in headings 8601 and 8602, HTSUS, and railway freight cars classified in heading 8606, HTSUS, on which no duty is owed (see Additional U.S. Note 1, chapter 86, HTSUS). These exemptions from entry are noted in § 141.4(b)(4), Customs Regulations (19 CFR 141.4(b)(4)). Accordingly, to reflect these exemptions from entry, a reference to § 141.4(b)(4) is also added to § 10.41(d).

The Regulatory Flexibility Act, Executive Order 12866 and Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements

Because the amendment merely conforms to existing law and regulatory practice as noted above, notice and public procedure in this case are inapplicable and unnecessary pursuant

to 5 U.S.C. 553(b)(B), and, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public comment requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor does the amendment result in a ''significant regulatory action'' under E.O. 12866.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, International traffic, Reporting and recordkeeping requirements, Vehicles.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 and the relevant specific sectional authority citation continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.41, 10.41a, 10.107 also issued under 19 U.S.C. 1322;

* * * * *

2. Section 10.41 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 10.41 Instruments; exceptions.

* * * * *

(d) Any foreign-owned locomotive or other railroad equipment, truck, bus, taxicab, or other vehicle, aircraft, or undocumented boat brought into the United States for the purpose of carrying merchandise or passengers between points in the United States for hire or as an element of a commercial transaction, except as provided at §§ 123.12 (a) and (b), 123.14(c), and 141.4(b)(4), is subject to treatment as an importation of merchandise from a foreign country and a regular entry for such vehicle, aircraft or boat will be made. * * *

* * * * *

Raymond W. Kelly,

Commissioner of Customs.

Approved: August 3, 1999.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–29380 Filed 11–9–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8842]

RIN 1545–AW32

Acquisition of an S Corporation by a Member of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code. These final regulations provide specific rules that apply to the acquisition of the stock of an S corporation by a member of a consolidated group. These rules eliminate the compliance burdens associated with filing a separate return for the day that an S corporation is acquired by a consolidated group. Additionally, the regulations clarify the rule for the filing of the separate return for a corporation's items for the period not included in the consolidated return.

DATES: *Effective Date:* These regulations are effective November 10, 1999.

Applicability Date: For dates of applicability, see § 1.1502–76(b)(6)(i).

FOR FURTHER INFORMATION CONTACT: Vincent Daly, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On December 17, 1998, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–106219–98, 63 FR 69581), concerning acquisitions by a consolidated group of at least eighty percent of the stock of an S corporation. Although a comment was received questioning the advisability of a special rule for the acquisition of an S corporation, the IRS and Treasury have determined the rules are necessary to eliminate the administrative burden of filing a separate tax return for the day the S corporation is acquired. The proposed regulations are adopted by this Treasury decision.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations will provide administrative relief to small entities by removing the administrative burden of filing a separate one-day return currently required for certain acquisitions. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey L. Vogel of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1362–3 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 1.1362–3 Treatment of S termination year.

(a) *In general.* * * * See, however, § 1.1502–76(b)(1)(ii)(A)(*2*) for special rules for an S election that terminates under section 1362(d) immediately before the S corporation becomes a member of a consolidated group (within the meaning of § 1.1502–1(h)).

* * * * *

Par. 3. Section 1.1502–76 is amended as follows:

1. The text of paragraph (b)(1)(ii)(A) following the paragraph heading is redesignated as paragraph (b)(1)(ii)(A)(*1*).

2. A paragraph heading for newly designated paragraph (b)(1)(ii)(A)(*1*) is added.

3. The first sentence of newly designated paragraph (b)(1)(ii)(A)(*1*) is revised.

4. Paragraph (b)(1)(ii)(A)(*2*) is added.

5. Paragraph (b)(2)(v) is redesignated as paragraph (b)(2)(vi).

6. New paragraph (b)(2)(v) is added.

7. Paragraphs (b)(4) and (b)(5) are redesignated as paragraphs (b)(5) and (b)(6), respectively.

8. New paragraph (b)(4) is added.

9. Newly designated paragraph (b)(5) is amended as follows:

a. *Example 6* (b), first sentence is revised.

b. *Example 6* (c), second sentence is revised.

c. *Example 7* is added.

10. Newly designated paragraph (b)(6)(i) is revised.

The revisions and additions read as follows:

§ 1.1502–76 Taxable year of members of group.

* * * * *

(b) * * * (1) * * *

(ii) * * *(A) End of the day rule—(*1*) *In general.* If a corporation (S), other than one described in paragraph (b)(1)(ii)(A)(*2*) of this section, becomes or ceases to be a member during a consolidated return year, it becomes or ceases to be a member at the end of the day on which its status as a member changes, and its tax year ends for all Federal income tax purposes at the end of that day. * * *

(*2*) *Special rule for former S corporations.* If S becomes a member in a transaction other than in a qualified stock purchase for which an election under section 338(g) is made, and immediately before becoming a member an election under section 1362(a) was in effect, then S will become a member at the beginning of the day the termination of its S corporation election is effective. S's tax year ends for all Federal income tax purposes at the end of the preceding day. This paragraph (b)(1)(ii)(A)(*2*) applies to transactions occurring after November 10, 1999.

* * * * *

(2) * * *

(v) *Acquisition of S corporation.* If a corporation is acquired in a transaction to which paragraph (b)(1)(ii)(A)(*2*) of this section applies, then paragraphs (b)(2)(ii) and (iii) of this section do not apply and items of income, gain, loss, deduction, and credit are assigned to each short taxable year on the basis of the corporation's normal method of accounting as determined under section 446. This paragraph (b)(2)(v) applies to transactions occurring after November 10, 1999.

* * * * *

(4) *Determination of due date for separate return.* Paragraph (c) of this section contains rules for the filing of the separate return referred to in this paragraph (b). In applying paragraph (c) of this section, the due date for the filing of S's separate return shall also be determined without regard to the ending of the tax year under paragraph (b)(1)(ii) of this section or the deemed cessation of its existence under paragraph (b)(2)(i) of this section.

(5) * * *

Example 6. Allocation of partnership items. * * *

(b) *Analysis.* Under paragraph (b)(2)(vi)(A) of this section, T is treated, solely for purposes of determining T's tax year in which the partnership's items are included, as selling or exchanging its entire interest in the partnership as of P's sale of T's stock. * * *

(c) *Controlled partnership.* * * * Under paragraph (b)(2)(vi)(B) of this section, T's distributive share of the partnership items is treated as T's items for purposes of paragraph (b)(2) of this section. * * *

Example 7. Acquisition of S corporation. (a) *Facts.* Z is a small business corporation for which an election under section 1362(a) was in effect at all times since Year 1. At all times, Z had only 100 shares of stock outstanding, all of which were owned by individual A. On July 1 of Year 3, P acquired all of the Z stock. P does not make an election under section 338(g) with respect to its purchase of the Z stock.

(b) *Analysis.* As a result of P's acquisition of the Z stock, Z's election under section 1362(a) terminates. See sections 1361(b)(1)(B) and 1362(d)(2). Z is required to join in the filing of the P consolidated return. See § 1.1502–75. Z's tax year ends for all Federal income tax purposes on June 30 of Year 3. If no extension of time is sought, Z must file a separate return for the period from January 1 through June 30 of Year 3 on or before March 15 of Year 4. See paragraph (b)(4) of this section. Z will become a member of the P consolidated group as of July 1 of Year 3. See paragraph (b)(1)(ii)(A)(*2*) of this section. P group's Year 3 consolidated return will include Z's items from July 1 to December 31 of Year 3.

(6) *Effective date*—(i) *General rule.* Except as provided in paragraphs (b)(1)(ii) (A)(2) and (b)(2)(v) of this section, this paragraph (b) applies to corporations becoming or ceasing to be members of consolidated groups on or after January 1, 1995.

* * * * *

Bob Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: October 29, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 99–29085 Filed 11–9–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–99–006]

RIN 2115–AE47

Drawbridge Operation Regulations; Sassafras River, Georgetown, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Maryland Route 213 drawbridge across the Sassafras River, Mile 10.0, at Georgetown, Maryland. This change will restrict drawbridge openings from November 1 through March 31, from midnight to 8 a.m., by requiring a six-hour advance notice for drawbridge openings. This change will eliminate the need to have the bridge constantly manned during times of minimal use while still providing for the reasonable needs of navigation.

DATES: This rule is effective December 10, 1999.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–99–006 and are available for inspection or copying at the office of the Commander (AOWB), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 757–398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 14, 1999, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Drawbridge Operation Regulations: Sassafras River, Georgetown, MD'' in the **Federal Register** (64 FR 26349). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Maryland Route 213 Sassafras River drawbridge across the Sassafras River, Mile 10.0, at Georgetown, Maryland, is currently required to open on signal year-round. The Maryland Department of Transportation (MDOT) has requested that the Coast Guard change the operating schedule for the drawbridge by requiring a six-hour

advance notice to open the bridge from November 1 to March 31, from midnight to 8 a.m. Review of MDOT's bridge logs from 1993 to 1997 reveals a total of 29 bridge openings for the five year period during the months from November 1 through March 31, an average of 1.2 openings per month. Due to the low number of openings that have occurred during the November through March time period, we believe this change will not unduly restrict navigation.

Discussion of Comments and Changes

The Coast Guard received no comments on the NPRM. Since no comments were received and we believe the change is warranted based on our findings, the final rule is being implemented without change.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to adhere to the new operation procedures during transits of the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that this rule will only effect drawbridge openings during periods of little or no usage by vessel operators.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. This was accomplished through the solicitation of comments from local waterway users and marinas during a Coast Guard conducted field study, and through publication of the NPRM in the **Federal Register** in which comments were solicited.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 12612, and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule only deals with the operating schedule of an existing drawbridge and will have no impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Add § 117.570 to read as follows:

§ 117.570 Sassafras River.

The draw of the Sassafras River (Route 213) bridge, mile 10.0 at Georgetown, Maryland, shall open on signal; except that from November 1 through March 31, from midnight to 8 a.m., the draw need only open if at least a six-hour advance notice is given.

Dated: October 27. 1999.

Thomas E. Bernard,

Captain, U. S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–29364 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–99–003]

RIN 2115–AE47

Drawbridge Operation Regulations; Miles River, Easton, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Maryland Route S370 drawbridge across the Miles River, Mile 10.0, at Easton, Maryland. This change will restrict drawbridge openings from November 1 through March 31, 24 hours a day, and from April 1 through October 31, from 6 p.m. to 6 a.m., by requiring a six-hour advance notice for

drawbridge openings. At all other times the bridge will open on demand. This new rule will eliminate the need to have the bridge constantly manned during times of minimal use while still providing for the reasonable needs of navigation.

DATES: This rule is effective December 10, 1999.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–99–003 and are available for inspection or copying at the office of the Commander (AOWB), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 757–398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 14, 1999, we published a Notice of Proposed Rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Miles River, Easton, MD'' in the **Federal Register** (64 FR 26350). We received no letters commenting on the Proposed Rule. No public hearing was requested, and none was held.

Background and Purpose

33 CFR 117.565 currently requires the draw of the S370 Miles River Bridge, mile 10.0 at Easton, to open on signal from sunrise to sunset. A vessel wishing to pass through the draw from sunset to sunrise must notify the drawtender of the time at which it is desired to pass and the draw must open as close to the time requested as practicable.

The Maryland Department of Transportation, State Highway Administration, requested that we change the opening schedule of this bridge by requiring a six-hour advance notice for drawbridge openings, from November 1 through March 31, 24 hours a day, and from April 1 through October 31, from 6 p.m. to 6 a.m. At all other times the bridge will open on demand. This change was requested to better establish the times the bridge will open on demand and to eliminate the need for a drawtender during times when there are a minimal number or no bridge openings. The Maryland Department of Transportation provided draw logs that showed the drawbridge had opened 4 times in two years from November 1 through March 31. The logs also clearly showed a reduced number of drawbridge openings from April 1 through October 31 between the hours of 6 p.m. and 6 a.m. The Coast Guard conducted a field study of the local marinas and waterway users in the area of the drawbridge. No adverse comments were received during the field study. This bridge is located in a rural upriver location with little or no nighttime navigation.

Discussion of Comments and Changes

The Coast Guard received no comments on the NPRM. Since no comments were received and we believe the change is warranted based on our findings, the final rule is being implemented without change.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to adhere to the new operation procedures for notice before transits of the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''Small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that this rule will only affect drawbridge openings during periods of little or no usage by vessel operators, and it clarifies the hours when the bridge must open on signal for both the bridge owner and vessel operators.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. This was accomplished through solicitation of comments from local waterway users and marinas during a Coast Guard conducted field study, and through publication of the NPRM in the **Federal Register** in which comments were solicited.

Collection of Information

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

Federalism

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

Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further

environmental documentation. This rule only deals with the operating schedule of an existing drawbridge and will have no impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.565 to read as follows:

§ 117.565 Miles River.

The draw of the Route S370 bridge, mile 10.0 at Easton, Maryland, shall open on signal; except that from November 1 through March 31, 24 hours a day, and from April 1 through October 31, from 6 p.m. to 6 a.m., a six-hour advance notice to the drawtender is required for bridge openings.

Dated: October 27, 1999.

Thomas E. Bernard,

Acting Captain, U. S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–29363 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 13–98–023]

RIN 2115–AE84

Regulated Navigation Area; Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard, after consultation with the Department of Justice, Department of Interior and the Department of Commerce, is revising the Interim Rule and adopting it as final. The Coast Guard is establishing a permanent Regulated Navigation Area (RNA) along the northwest Washington coast and in a portion of the entrance of the Strait of Juan de Fuca. The final RNA covers a broader geographic area than the interim rule and also changes the amount of time of the SECURITE notice from one hour to one half hour prior to whale hunting operations. The RNA will reduce the danger to life and property in the vicinity of Makah whale hunt activities. Within the RNA, a moving exclusionary zone (MEZ) around a Makah whale hunt vessel may be in effect during actual whale hunt operations.

DATES: This final rule is effective November 10, 1999.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 13–98–023 and are available for inspection or copying at Thirteenth Coast Guard District (m), RM 3506, 915 Second Avenue, Seattle, WA 98174, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thirteenth District Marine Safety Division (m), United States Coast Guard (206) 220–7210.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 22, 1998, we published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Area, Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting'' in the **Federal Register** (63 FR 39256). On October 1, 1998, we published an interim rule entitled ''Regulated Navigation Area, Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting'' in the **Federal Register** (63 FR 52603) No public hearing was held.

Migrating gray whales are expected in the RNA after November 1, 1999. An early effective date for this rule will help ensure safety of persons and property at sea should whale hunting operations commence during November in the expanded RNA. While the size of the RNA is expanded by the final rule, the size of the MEZ is unchanged. The Coast Guard did not receive the results of the environmental consultations in time to allow for a delayed effective date after publication. For these reasons, the Coast Guard finds good cause, under 5 U.S.C. 553(d)(3), that this rule should be made effective in less than 30 days after publication.

Background and Purpose

The Makah Tribe has a federally recognized treaty right to hunt whales in their usual and accustomed fishing area off the northwest coast of Washington and in the entrance of the Strait of Juan de Fuca. Several hunts were initiated, but did not result in a whale being taken, in significant part to interference caused by boaters near the tribal hunt vessels. A whale hunt was completed on May 17, 1999 using a harpoon and a .50 caliber rifle, fired from a small boat. These experiences established that an MEZ reduces the dangers to persons and vessels in the vicinity of whale hunting activities. The uncertain reactions of a pursued or wounded whale and the inherent dangers in firing a hunting rifle from a pitching and rolling small boat are likely to be present in all future hunts, and present a significant danger to life and property if persons and vessels are not excluded from the immediate vicinity of a hunt.

Discussion of Comments and Changes

The Coast Guard received a total of 49 comments after publication of the interim rule. The comments included letters from 10 organizations, 1 federal agency, the Makah tribe, and 1 petition with multiple signatures. Responses to these comments and changes made in the interim rule are discussed in the following paragraphs.

Several comments objected to the taxpayer expense involved in implementing this rule. One suggested that the costs associated with enforcement of the RNA be borne by the Makah Tribe, not with federal funds. RNAs, safety zones and limited access areas are enforced nationwide using the Coast Guard's operating expense account. For example, a city fireworks display often requires a safety zone around it and federal funds are expended in implementing and enforcing such zones. Moreover, the creation of an RNA does not require that the Coast Guard be on scene for the rule to be in effect; the Coast Guard has the discretion to place units on scene with or without a rule.

A frequent comment was that the RNA violated first amendment rights. Generally, these comments raised the concern that the 500 yard MEZ distance prevents appropriate documentation and recording of an event that is of significant public interest. One comment suggested that the Coast Guard implement a system of observers pooled from the media and non-government agencies to witness the whale hunt from Coast Guard assets. The Coast Guard recognizes that there is a public interest in the media recording and documenting this event. The interim rule allowed a single press pool vessel within the MEZ subject to certain restrictions. Requiring other members of

the public, including potential protesters, to remain 500 yards away from the hunt is a reasonable, content neutral restriction in light of the serious safety concerns presented by a whale hunt. This carefully tailored final rule balances the allowance for a press pool vessel within the MEZ and the significant public safety concerns, tribal treaty rights, and first amendment rights. The creation of the RNA is intended to enhance safety at sea. The presence of a media pool vessel and helicopters during prior hunts indicate very good ability for the media to document and witness these events.

Numerous comments opposed any whaling. A petition with several signatures requested that the Coast Guard repeal the exclusionary zone. One comment stated that the Coast Guard failed to remain impartial and neutral. Another comment opined that the zone was being created solely to avoid controversy. Several comments addressed the morality of whale hunting and described the intended method of killing the whale as inhumane. The Coast Guard has been informed by the Department of Interior and Department of Justice that physical interference with the Makah whale hunt is inconsistent with federal law. The Coast Guard is very concerned about the public safety aspects of the Makah whale hunt and, through implementation of this rule, is taking carefully tailored precautions without unconstitutionally infringing on public activities.

Several comments disagreed with the U.S. Government's position that the Makah have International Whaling Commission permission to whale. Some comments also indicated that the hunt is inconsistent with international law and compromises the U.S. position on international whaling. Several comments expressed that the hunt would not promote the Makah's well being, that the hunt would lead to commercial whaling on a world-wide basis, and that whale hunting violates the Marine Mammal Protection Act. One comment stated that the RNA could result in killing ''JJ the whale.'' These comments involve matters outside the scope of this rule and are primarily the concern of other federal and international bodies. The Coast Guard is working with other agencies to ensure its efforts are consistent with federal law.

Some comments raised concerns that the proposed SECURITE broadcasts created an unreasonable restriction on boaters in the area and provided inadequate notice of the MEZ. The MEZ is activated when a Makah whaling vessel displays the international numeral pennant five (5) flag. The final rule has been modified with respect to the length of the SECURITE notice prior to whale hunting operations. The Makah whalers are required to provide a Channel 16 VHF–FM SECURITE notice one half hour prior to whale hunt operations and every half hour following that until completion of the hunt. In addition, all vessels transiting the RNA are urged to keep an operating marine radio tuned to Channel 16 VHF–FM. The Coast Guard has not observed unreasonable restrictions on boating when an MEZ has been activated and finds that one half-hour notice is adequate notice to boaters considering the small size of the MEZ and the low density of vessel traffic.

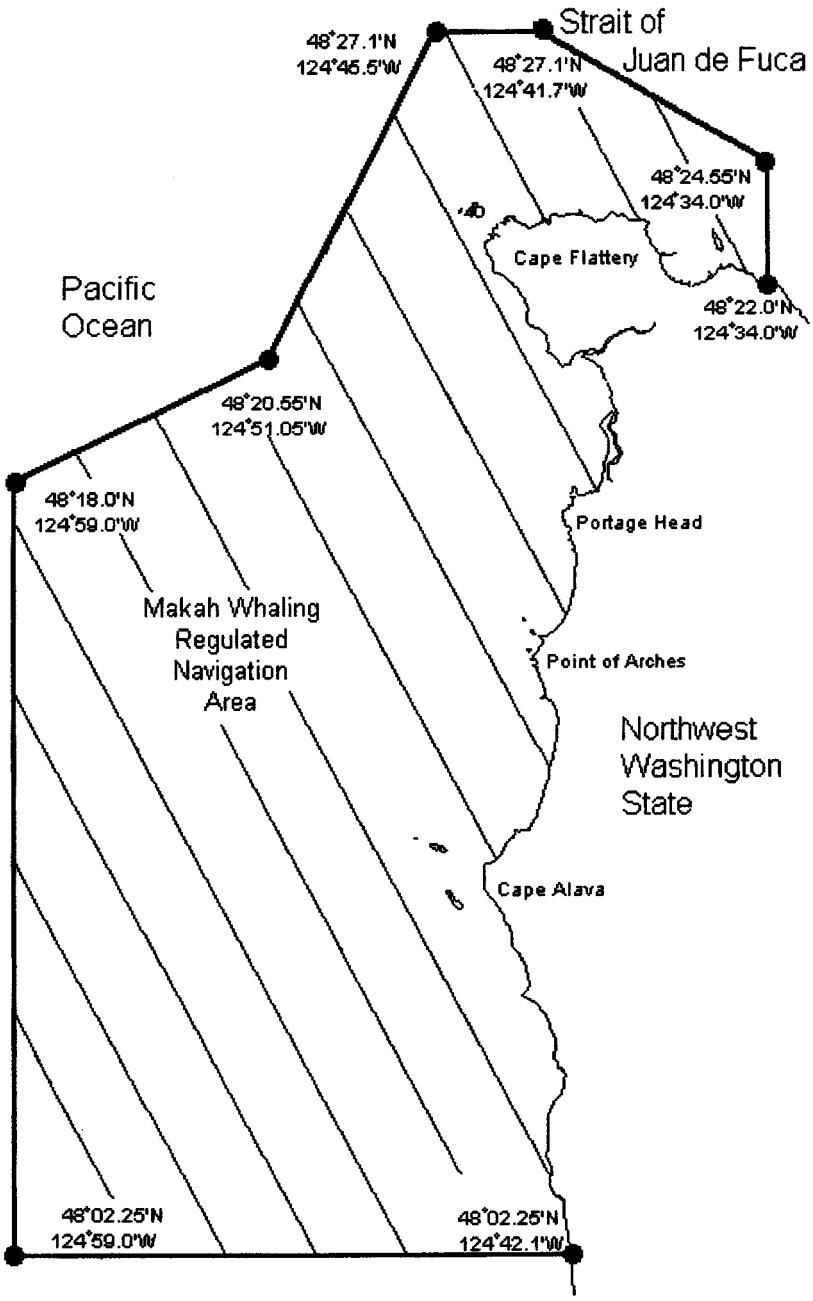
Several comments requested that the MEZ be applied to all Makah vessels engaged in the hunt. The zone is intended to enhance safety at sea in the vicinity of the hunting activity. The extension of the zone to include all Makah vessels would create multiple zones around vessels that are not necessarily directly involved in the hunt. The MEZ is established during daylight hours when a Makah vessel engaged in the hunt issues the one-half hour SECURITE notice and raises the international numeral five pennant. If the pennant is transferred from one vessel to another vessel involved in the hunt, then the zone is established around that vessel. The pennant is the signal to all mariners that the zone is in place around the vessel flying the pennant.

Although numerous comments requested a public hearing, no comments provided convincing reasons why a hearing would be helpful in this rulemaking. Based on all the comments received to date, there has been an adequate forum and sufficient time for the public to express its concerns on all issues related to this rulemaking.

One comment stated that there was no evidence supporting the finding that physical interference with the hunt is inconsistent with federal law. The Department of the Interior (DOI) is the agency tasked with determination of tribal treaty rights. In DOI's view, the Makah Tribe's right to engage in the harvest of whales is protected by federal law, and the federal government has legal authority to protect the exercise of that right. The central purpose of this regulation, however, is to enhance safety at sea.

Some comments asked that the RNA be extended southward to the full breadth of the Makah Tribe's usual and accustomed fishing area at 48°02′25″ N. The whale hunts that took place in early 1999 generally involved operations south of the RNA boundary as established in the interim rule. These hunts were nevertheless within the Makah's usual and accustomed whaling area. The Makah have indicated they will continue to hunt in this area. Further the Coast Guard has determined that it is capable of monitoring activity in this area. The final rule is extending the RNA to include a greater portion of the Makah Tribe's usual and accustomed fishing area. The Coast Guard Authorization Act of 1998 added a definition of navigable waters of the United States at 33 U.S.C. 1222(5) to include the territorial sea out to 12 nautical miles from the baseline of the United States. (Pub. L. 105–383, Title III, § 301(a), Nov 13, 1998, 112 Stat. 3417). This authorizes the Coast Guard to extend the protections of the RNA under the Ports and Waterways Safety Act from three to twelve nautical miles from the baseline of the United States. For the purposes of this rule, the definition at 33 U.S.C. 1222(5) supercedes the definitions found at 33 CFR §§ 2.05–5 and 2.05–25. The RNA will extend out to a north-south line approximately 10 nautical miles off the western coast of Washington State so as to avoid the Navy firing range and the Traffic Separation Scheme (TSS). The RNA will also extend southward to fully encompass the Tribe's usual and accustomed fishing areas. The purpose of the RNA is to promote safety. The Makah have clearly established that they will hunt within their entire usual and accustom fishing area. The Notice of Proposed Rule Making and the Interim Rule relied heavily upon the concern within the Coast Guard of the ability to patrol effectively in this remote area. Now that we have experienced an actual hunt we believe we can effectively patrol the expanded area. NOAA has also indicated that they would like the RNA to similarly be expanded. This is an illustration of the expanded RNA:

BILLING CODE 4910–15–P


Strait of
Juan de Fuca
48°27.1'N
124°45.5'W
48°27.1'N
124°41.7'W
48°24.55'N
124°34.0'W
Cape Flattery
48°22.0'N
124°34.0'W
Pacific
Ocean
48°20.55'N
124°51.05'W
48°18.0'N
124°59.0'W
Portage Head
Makah Whaling
Regulated
Navigation
Area
Point of Arches
Northwest
Washington
State
Cape Alava
48°02.25'N
124°59.0'W
48°02.25'N
124°42.1'W

4910–15–C

Regulatory Evaluation

This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). Although some public comments stated that this action constitutes a significant regulatory action, the Coast Guard disagrees based on the minor portion of the navigable waters affected, and the brief time that actual whale hunt operations involve. Because of the limited number of whales that can be taken annually and the small size of the MEZ, the Coast Guard expects the economic impact of this interim rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

Small entities that might be affected could include whale-watching ventures, tugboats and their tows, small passenger vessels, and commercial fishermen. Several comments stated that the impact on small entities had not been quantified. Some of these comments indicated that both the media as an economic entity and recreational fishing vessels would be harmed by this rule. The media will be allowed to document the hunt using a media pool vessel. Small entities and recreational vessels such as fishing vessels and whale watching boats need to maintain prudent distances from whale hunts as a safety precaution whether this rule exists or not. As discussed above, the Coast Guard recommends that all mariners, including small entities, maintain a distance well in excess of 500 yards during whale hunt activities. The very small size and duration of the MEZ minimizes the effects, if any, from this rule on small entities.

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

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

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

Federalism

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

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government, or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the potential environmental impacts of this rule and concluded that there were no potential effects that preclude application of the categorical exclusion found under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC. Paragraph (34)(g) authorizes a categorical exclusion for rulemakings changing a Regulated Navigation Area. In assessing the potential environmental impacts of this rule, the Coast Guard consulted with the U.S. Fish and Wildlife Service, the Nisqually National Wildlife Refuge Complex, the Washington Maritime National Wildlife Refuge Complex, and the National Marine Fisheries Service. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

Accordingly, the interim rule amending 33 CFR part 165 which was published at 63 FR 52609 on October 1, 1998, is adopted as a final rule with the following change:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

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

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

2. Amend *§ 165.1310* by revising paragraphs (a) and (e) to read as follows:

§ 165.1310 Strait of Juan de Fuca and Adjacent Coastal Waters of Northwest Washington; Makah Whale Hunting—Regulated Navigation Area.

(a) The following area is a Regulated Navigation Area (RNA): From 48°02.25′N, 124°42.1′W northward along the mainland shoreline of Washington State to Cape Flattery and thence eastward along the mainland shoreline of Washington State to 48°22′N, 124°34′W; thence due north to 48°24.55′N, 124°34′W; thence northwesterly to 48°27.1′N, 124°41.7′W; thence due west to 48°27.1′N, 124°45.5′W; thence southwesterly to 48°20.55′N, 124°51.05′W, thence west south west to 48°18.0′N 124°59.0′W, thence due south to 48°02.25′N, 124°59.0′W) thence due east back to the shoreline of Washington at 48°02.25′N, 124°42.1′W. Datum: NAD 1983.

* * * * *

(e) The Makah Tribe shall make SECURITE broadcasts beginning one half hour before the commencement of

a hunt and every half hour thereafter until hunting activities are concluded. This broadcast shall be made on channel 16 VHF-FM and state:

A whale hunt is proceeding today within the Regulated Navigation Area established for Makah whaling activities. The (name of vessel) is a (color and description of vessel) and will be flying international numeral pennant five (5) while engaged in whaling operations. This pennant is yellow and blue in color. Mariners are required by federal regulation to stay 500 yards away from (name of vessel), and are strongly urged to remain even further away from whale hunt activities as an additional safety measure.

* * * * *

Dated: November 1, 1999.

James C. Olson,

Captain, U.S. Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 99–29365 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–087–1–9939a; FRL–6463–6]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On July 29, 1998, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR) submitted miscellaneous revisions to the North Carolina State Implementation Plan (SIP). These revisions include but are not limited to, clarifying rules for the control of particulate emissions, adding requirements for expedited permit processing, revising the Division name and address, and amending case-by-case MACT language. EPA is approving these revisions because they are consistent with the requirements set forth in the Clean Air Act (CAA) amendments of 1990.

DATES: This direct final rule is effective January 10, 2000, without further notice, unless EPA receives adverse comment by December 10, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Gregory Crawford at the U.S. Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

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 30303–8960.

North Carolina Department of Environment and Natural Resources, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford, Regulatory Planning Section, Air Planning Branch, Air Pesticides and Toxics Management Division at 404/562–9046.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1998, the State of North Carolina Department of Environment and Natural Resources submitted revisions to amend, adopt, and repeal multiple sections in the North Carolina Administrative Code. These amendments address Subchapters 2D—Air Pollution Control Requirements and 2Q—Air Quality Permits Requirements. Detailed descriptions of the amendments are listed under ''Analysis of the State's Submittal.''

II. Analysis of State's Submittal

15 A NCAC 2D .0101—Definitions, .0104—Incorporation by Reference, .0105—Mailing List, .0202—Registration of Air Pollution Sources, .0302—Episode Criteria, .0531—Sources in Nonattainment Areas, .0953—Vapor Return Piping for Stage II Vapor Recovery, .1902—Definitions, .1903—Permissible Open Burning Without a Permit, 15 A NCAC 2Q .0103—Definitions, .0108—Delegation of Authority, .0307—Public Participation Procedures

These regulations were amended to change the Division's name from Division of Environmental Management to the Air Quality Division, due to restructure of the organization.

15A NCAC 2Q .0207—Annual Emissions Reporting

This regulation was amended to add perchloroethylene to the list of compounds in 15A NCAC 2Q .0207, since annual reporting of emissions is required.

15A NCAC 2Q .0805—Grain Elevators, .0806—Cotton Gins, .0807—Emergency Generators

These regulations were amended to revise the exclusionary levels for permit fee purposes for both grain elevators and cotton gins and to clarify that storage tanks that store fuel for an emergency generator would not disqualify the generator from exclusionary rules.

15A NCAC 2D .0506—Particulates from Hot Mix Asphalt Plants, .0507—Particulates From Chemical Fertilizer Manufacturing Plants, .0508—Particulates From Pulp and Paper Mills, .0509—Particulates from Mica or Feldspar Processing Plants, .0510—Particulates From Sand, Gravel, or Crushed Stone Operations, .0511—Particulates From Lightweight Aggregate Processes, .0513—Particulates From Portland Cement Plants, .0514—Particulates From Ferrous Jobbing Foundries, .0515—Particulates From Miscellaneous Industrial Processes, .0540—Particulates From Fugitive Non-Process Dust Emission Sources

These regulations were adopted to clarify existing and adopt new rules for the control of particulate emissions. The allowable emission rates for the sections were simplified from a table format to a bullet listing of emission rates for each section.

15A NCAC 2D .0521—Control of Visible Emissions

This regulation amends language to use consistent terminology in the visible emissions rule.

15A NCAC 2D .0914—Determination of VOC Emission Control System Efficiency

This regulation was amended to correct a deficiency identified by the EPA in the procedures for determining capture efficiency. EPA recommends capture efficiency protocols and test methods be determined as described in the EPA document, EMTIC GD–035, ''Guidelines for Determining Capture Efficiency.'' The State is incorporating this rule by reference.

15A NCAC 2D. 0927—Bulk Gasoline Terminals

This regulation was amended to require bulk gasoline terminals to weld or gasket deck seams on contact decks.

15A NCAC 2D. 0953—Vapor Return Piping for Stage II Vapor Recovery

This regulation was amended to require affected facilities (any gasoline

service station or gasoline service station dispensing facility) to install necessary piping for installation of the California Air Resource Board certified Stage II vapor recovery systems.

15A NCAC 2Q .0101—Required Air Quality Permits, .0306—Permits Requiring Public Participation, .0312—Application Processing Schedule

These regulations amend the case-by-case Maximum Achievable Control Technology rules by incorporating details of the final federal requirements into the existing State rules requiring and specifying procedures for such determinations.

15A NCAC 2D .0938—Perchloroethylene Dry Cleaning System

This regulation was amended to remove an unnecessary rule since perchloroethylene is no longer considered a volatile organic compound for the formation of ozone.

15A NCAC 2Q .0312—Application Processing Schedule, .0313—Expedited Processing Schedule, .0607 Application Processing Schedule

These regulations adopt rules for the implementation of expedited permit processing procedures and amend the application processing schedule rules.

III. Final Action

EPA is approving the aforementioned changes to the SIP because they are consistent with the Clean Air Act and EPA requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 adverse comments be filed. This rule will be effective January 10, 2000 without further notice unless the Agency receives adverse comments by December 10, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will 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. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 10, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal

governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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).

F. 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 annual 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 annual 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.

G. 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 the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. 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 January 10, 2000. 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, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 5, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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 II—North Carolina

2. Section 52.1770(c) is amended by revising the entries for Sections 2D Air Pollution Control Requirements: .0101, .0104, .0105, .0202, .0302, .0506, .0507, .0508, .0509, .0510, .0511, .0513, .0514, .0515, .0521, .0531, .0540, .0914, .0927, .0938, .0953, .1902, .1903 and Subchapter 2Q Air Quality Permits Requirements: .0101, .0103, .0108, .0207, .0306, .0307, .0312, .0313, .0607, .0805, .0806, .0807, to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
* * *	* * *	*		*
Section .0101	Definitions	1/15/98	11/10/99	
Subchapter 2D Air Pollution Control Requirements				
* * *	* * *	*		*
Section .0105	Mailing List	1/15/98	11/10/99	
* * *	* * *	*		*
Section .0202	Registration of Air Pollution Sources	1/15/98	11/10/99	
* * *	* * *	*		*
Section .0302	Episode Criteria	1/15/98	11/10/99	
* * *	* * *	*		*
Section .0506	Particulates from Hot Mix Asphalt Plants	3/20/98	11/10/99	
Section .0507	Particulates from Chemical Fertilizer	3/20/98	11/10/99	
Subchapter 2D Air Pollution Control Requirements				
Section .0508	Particulates from Pulp and Paper Mills	3/20/98	11/10/99	
Section .0509	Particulates from Mica or Feldspar Processing	3/20/98	11/10/99	
Section .0510	Particulates from Sand, Gravel, or Crushed Stone Operations.	3/20/98	11/10/99	
Section . 0511	Particulates from Lightweight Aggregate	3/20/98	11/10/99	
* * *	* * *	*		*
Section .0513	Particulates from Portland Cement Plants	3/20/98	11/10/99	
Section .0514	Particulates from Ferrous Jobbing Foundries	3/20/98	11/10/99	
Subchapter 2D Air Pollution Control Requirements				
Section .0521	Control of Visible Emissions	3/20/98	11/10/99	
* * *	* * *	*		*
Section .0531	Sources in Nonattainment Areas	1/15/98	11/10/99	
* * *	* * *	*		*
Section .0540	Particulates from Fugitive Non-Process Dust Emission Sources.	3/20/98	11/10/99	
* * *	* * *	*		*
Section .0914	Determination of VOC Emission Control System Efficiency.	3/20/98	11/10/99	
* * *	* * *	*		*
Section .0927	Bulk Gasoline Terminals	3/20/98	11/10/99	
Subchapter 2D Air Pollution Control Requirements				
* * *	* * *	*		*
Section .0953	Vapor Return Piping for Stage II Vapor Recovery.	1/15/98	11/10/99	
Section .0953	Vapor Return Piping for Stage II Vapor Recovery.	3/20/98	11/10/99	
* * *	* * *	*		*
Section .1902	Definitions	1/15/98	11/10/99	
Section .1903	Permissible Open Burning Without a Permit	1/15/98	11/10/99	
Subchapter 2Q Air Quality Permits Requirements				
Section .0101	Required Air Quality Permits	3/20/98	11/10/99	

EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *			*	*
Subchapter 2Q Air Quality Permits Requirements				
Section .0103	Definitions	1/15/98	11/10/99	
* * * * *			*	*
Section .0207	Annual Emissions Reporting	1/15/98	11/10/99	
* * * * *			*	*
Section .0306	Permits Requiring Public Participation	3/20/98	11/10/99	
Section .0307	Public Participation Procedures	1/15/98	11/10/99	
* * * * *			*	*
Section .0312	Application Processing Schedule	3/20/98	11/10/99	
Subchapter 2Q Air Quality Permits Requirements				
* * * * *			*	*
Section .0805	Grain Elevators	1/15/98	11/10/99	
Section .0806	Cotton Gins	1/15/98	11/10/99	
Section .0807	Emergency Generators	1/15/98	11/10/99	

[FR Doc. 99–27931 Filed 11–9–99; 8:45 am]
BILLING CODE 6560–50–p

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD–FRL–6471–6]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Amendments to Air Pollution Control Regulation Number 9; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On June 2, 1999 (64 FR 29563), EPA promulgated amendments to Rhode Island's Air Pollution Control Regulation Number 9. The document correctly identified the changes in the Regulation. However, the table incorrectly implied that the entire regulation had been changed.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, Air Permits Program, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023; (617) 918–1655.

SUPPLEMENTARY INFORMATION: In the document published on June 2, 1999, the revision to Table 52.2081 is incorrect. This final rule corrects the table to incorporate only the changes submitted by Rhode Island DEM on August 6, 1996.

The EPA regrets any inconvenience the earlier information has caused.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Prevention of significant deterioration, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 28, 1999.

John P. DeVillars,

Regional Administrator, Region I.

Part 52, title 40 of the 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 OO—Rhode Island

2. In § 52.2081, Table 52.2081 is amended by adding a new entry to the existing state citation for Air Pollution Control Regulation No. 9.

§ 52.2081 EPA-approved Rhode Island State regulations.

* * * * *

TABLE 52.2081—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Changes/Unapproved sections
*	*	*	*	*	*	*
Air Pollution control Regulation No. 9.	Air Pollution Control Permits.	30 July 1996.	2 June 1999.	64 FR 29563	(c)(54)	Changes in 9.1.7, 9.1.18, and 9.5.1(c) to add Dual Source Definition. Changes in 9.1.24(b)(3), 9.5.2(b)(2)d(i), 9.5.1(d) and 9.5.1(f) to change Particulate Increment. Changes in 9.1.6 to revise BACT definition.
*	*	*	*	*	*	*

[FR Doc. 99–29183 Filed 11–9–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 61

RIN 0991–AA96

Service Fellowships

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is adopting without change the interim final rule amending the regulations governing service fellowships which was published in the **Federal Register** on February 27, 1998 (63 FR 9949). These amendments revised the authority citation, extended the time limitation on initial appointments from 2 years to 5 years, permitted extensions of appointments for up to 5 years rather than year-to-year, and deleted obsolete references to the Surgeon General.

DATES: *Effective Date:* November 10, 1999. The effective date for this final rule is not delayed because it adopts the interim final rule without change.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852; telephone 301–496–4607 (not a toll-free number); Fax 301–402–0169. For information with regard to service fellowships contact Edie Bishop, Office of Human Resource Management, National Institutes of Health, 31 Center Dr., MSC 0424, Bethesda, MD 20892–0424; telephone 301–402–9484 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) published in the **Federal Register** on February 27, 1998 (63 FR 9949) an interim final rule amending the regulations, codified at 42 CFR part 61, subpart B, governing service fellowships. Although the amendments were published as an interim final rule and were effective immediately, the Secretary requested comments on the regulations. The comment period expired on April 28, 1998. HHS received no comments on the amendments. Consequently, HHS is adopting the interim final rule without change as a final rule.

Section 207(g) of the Public Health Service Act, as amended, authorizes the Secretary to designate individual scientists, other than Commissioned Officers of the Public Health Service (PHS), to receive fellowships; to be appointed for duty with the Service and compensated without regard to the civil service classification laws; to hold their fellowships under conditions prescribed therein; and to be assigned for studies or investigations either in the United States or foreign countries during the terms of their fellowships.

Consistent with the legislative intent of the PHS Act, § 61.32 of the implementing regulations codified at 42 CFR Part 61, sates that service fellowships ''may be provided to secure the services of talented scientists for a period of limited duration for health-related research, studies, and investigations where the nature of the work or the character of the individual's services render customary employing methods impracticable or less effective.''

The interim final rule amended § 61.38 of the service fellowship regulations to make time limitations on initial appointments more flexible. Specifically, the interim final rule extended the current time limitation on initial appointments from 2 to 5 years, and revised the requirements with respect to extensions to permit extensions for up to 5 years rather than year-to-year. These changes are intended to provide HHS health agencies with greater flexibility to recruit and retain their scientists. It is anticipated that the increased flexibility will provide for simplified recruitment and classification. Employment will continue to be linked to scientific excellence as determined by agency peer review processes.

The interim final rule also amended the authority citation and the references to the Surgeon General to reflect that the authority for the service fellowships are vested in the Secretary. Section 61.30 was amended to remove the paragraph designations and the definition for the term ''Surgeon General'' and to add the definition for the term ''Secretary,'' and § 61.34 was amended to remove clause (b) and redesignate clause(c) and (b) to reflect current policy.

The following statements are provided for public information.

Executive Order No. 12866

Executive Order No. 12866, Regulatory Planning and Review, requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If an action is deemed to fall within the scope of the definition of the term ''significant regulatory action'' contained in § 3(f) of the Order, a pre-publication review by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) is necessary. This rule was reported to OIRA, and it was deemed not to be a significant regulatory action.

Regulatory Flexibility Act

Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant economic impact on a substantial number of small entities. The Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 is not required. This rule applies to individuals who apply for and may receive service fellowships. The rule does not apply or affect ''small entities'' as that term is defined in 5 U.S.C. 601.

Paperwork Reduction Act

This rule does not contain any information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

List of Subjects in 42 CFR Part 61

Fellowships.

Approved: September 10, 1999.

Harold Varmus,

Director, National Institutes of Health.

Dated: November 1, 1999.

Donna Shalala,

Secretary.

Subpart B—Service Fellowships

Accordingly, the interim rule amending 42 CFR part 61, subpart B, which was published at 63 FR 9949 on February 27, 1998, is adopted as a final rule without change.

[FR Doc. 99–29400 Filed 11–9–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket No. RSPA–99–6212 (HM–189P)]

RIN 2137–AD38

Hazardous Materials Regulations: Editorial Corrections and Clarifications; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rule [RSPA–99–6212 (HM–189P)], which was published in the **Federal Register** on Monday, September 27, 1999. That final rule amended the Hazardous Materials Regulations (HMR) to correct editorial errors, make minor regulatory changes and, in response to requests for clarification, improve the clarity of certain provisions in the HMR.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Michael G. Stevens, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1999, RSPA published a final rule under Docket HM–189P (64 FR 51912) to correct editorial errors, make minor regulatory changes and, in response to request for clarification, improve the clarity of certain provisions in the HMR. This amendment makes minor corrections to the September 27 final rule, which was effective October 1, 1999.

Because the amendments do not impose new requirements, notice and public procedure are unnecessary. The following is a summarization of the corrections made under this final rule.

Summary of Changes

Part 171

Section 171.6

In paragraph (b)(2), in the table of OMB control numbers, two subsection references in the third column are revised to correct a printing error.

Part 172

Section 172.101

In the entry ''Organic peroxide type C, liquid,'' UN3103, in column (1), the letter ''G'' was omitted inadvertently. The letter ''G'' in column (1) of the Hazardous Materials Table identifies proper shipping names for which one or more technical names of the hazardous material must be entered in parentheses in association with the basic description. This change was recently adopted in a final rule published March 5, 1999 (Docket HM–215C; 64 FR 10742).

In the entry ''Dichlorofluoromethane *or* refrigerant gas R21'', the word ''refrigerant'' is corrected to read ''Refrigerant'.

In the entry ''Sulfur'', 4.1 UN1350, in column (6), the ''9'' label code is corrected to read ''4.1''. This revision aligns the label entry with the corresponding hazard class of the material.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism''). Federal hazardous material transportation law, (49 U.S.C. 5101–5127) contains express preemption provisions at 49 U.S.C. 5125.

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

C. Executive Order 13084

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule would not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

D. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

E. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

F. Impact on Business Processes and Computer Systems (Year 2000)

Many computers that use two digits to keep track of dates may, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. The Year 2000 problem could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This final rule does not impose business process changes or require modification to computer systems. Because the final rule does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the requirements in the final rule.

G. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used

to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

Accordingly, 49 CFR parts 171 and 172 are corrected by making the following correcting amendments:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.6 [Corrected]

2. In § 171.6, in the paragraph (b)(2) table, for the entry ''2137–0557,'' in column 3 under ''Title 49 CFR part or section where identified and described'', ''173.124(a)(1)(iii)(b), (a)(2)(iii)(d)'' is removed and ''173.124(a)(1)(iii)(B), (a)(2)(iii)(D)'' is added in its place.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Corrected]

4. In § 172.101, in the Hazardous Materials Table, the following amendments are made:

a. In Column (1), for the entry ''Organic peroxide type C, liquid, 5.2, UN3103'', the letter ''G'' is added.

b. In column (2), the entry ''Dichlorofluoromethane *or* refrigerant gas R21'' is amended by revising the word ''refrigerant'' to read ''Refrigerant''.

c. In Column (6), for the entry ''Sulfur, 4.1, UN1350'', the label code ''9'' is removed and ''4.1'' is added in its place.

Issued in Washington, DC, on November 2, 1999, under authority delegated in 49 CFR part 1.

Stephen D. Van Beek,

Deputy Administrator.

[FR Doc. 99–29141 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990318076–9109–02; I.D. 110499A]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Commercial Haddock Harvest

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

ACTION: Increase of haddock landing limit.

SUMMARY: NMFS announces that less than 75 percent of the haddock target total allowable catch (TAC) will be harvested (4,218.5 mt) for the 1999 fishing year under the present landing limit. Therefore, the Regional Administrator, Northeast Region, NMFS (Regional Administrator) is increasing the landing limit. As of 0001 hours November 5, 1999, vessels fishing under a multispecies day-at-sea (DAS) may land up to 5,000 lb (2,268 kg) per DAS, 50,000 lb (22,680 kg) per trip maximum, for any DAS utilized on or after November 5, 1999. This action provides the industry with the opportunity to harvest at least 75 percent of the target TAC for the 1999 fishing year.

DATES: Effective from 0001 hours, November 5, 1999, through 2400 hours, April 30, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273.

SUPPLEMENTARY INFORMATION: Regulations implementing the haddock trip limit in Framework Adjustment 27 (64 FR 24066, May 5, 1999) became effective May 1, 1999. To ensure that haddock landings remain within the target TAC of 5,600 mt established for the 1999 fishing year, Framework 27 established an initial landing limit of 2,000 lb (907.2 kg) per day and 20,000 lb (9,071.8 kg) per trip maximum. Framework 27 also provided a mechanism to increase or decrease the haddock trip limit based upon the percentage of TAC which is projected to be harvested. Section 648.86(a)(1)(iii) specifies that if the Regional Administrator has projected that less than 75 percent of the haddock target TAC (4,218.5 mt) will be harvested for the 1999 fishing year the landing limit may be increased. Further, this section stipulates that NMFS will publish a notification in the **Federal Register** informing the public of the date of any increase or decrease.

Based on the available information, the Regional Administrator has projected that less than 4,218.5 mt of haddock will be harvested by April 30, 2000, under the existing landing limit. The Regional Administrator has determined that increasing the haddock landing limit to 5,000 lb (2,268 kg) per DAS, 50,000 lb (22,680 kg) per trip maximum, is justified because it provides the industry with the opportunity to harvest at least 75 percent of the target TAC for the 1999 fishing year. Therefore, the Regional Administrator, under § 648.86(a)(1)(iii), has increased the haddock landing limit to 5,000 lb (2,268 kg) per DAS, 50,000 lb (22,680 kg) per trip maximum, for DAS used on or after 0001 hours, November 5, 1999, through 2400 hours, April 30, 2000.

Classification

This action is required by 50 CFR Part 648 and is exempt from review under E.O. 12286.

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

Dated: November 4, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–29389 Filed 11–4–99; 4:59 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 217
Wednesday, November 10, 1999

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560–AF78

Farm Loan Programs Account Servicing Policies—Servicing Shared Appreciation Agreements

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is proposing to amend the Shared Appreciation Agreement and the servicing of Shared Appreciation Agreements. The Shared Appreciation Agreement ensures that FSA shares in any appreciation of real estate security when a farm borrower has received a writedown of a portion of his or her FSA debt. The amount due can be paid in full or amortized when the Shared Appreciation Agreement matures or is triggered during the term of the agreement. The changes will allow the value of some capital improvements made during the term of the Shared Appreciation Agreement to be deducted from recapture, change the maturity period of future Shared Appreciation Agreements from 10 years to 5 years, and reduce the interest rate on Shared Appreciation loans to the Farm Program Homestead Protection rate. These changes will give borrowers an opportunity to repay a portion of the FSA debt that was written off, while still ensuring that the Government promptly recaptures some appreciation of the collateral. This rule will also improve Agency security during the term covered by the Shared Appreciation Agreement.

DATES: Comments on this rule and on the information collections must be submitted by January 10, 2000 to be assured consideration.

ADDRESSES: Submit written comments to Director, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW, Washington, DC 20250–0523.

FOR FURTHER INFORMATION CONTACT: Michael C. Cumpton, telephone (202) 690–4014; electronic mail: mike__cumpton@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Evaluation

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically stated in this rule, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before seeking judicial review.

Executive Order 12372

For reasons contained in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The amendments to 7 CFR part 1951 set forth in this proposed rule require no revisions to the information collection requirements that were previously approved by OMB under the provisions of 44 U.S.C. chapter 35.

Title: 7 CFR 1951–S, Farmer Program Account Servicing Policies.

OMB Number: 0560–0161.

Expiration Date of Approval: January 31, 2001.

Type of Request: Revision of a currently approved information collection.

Abstract: The information collected under OMB Number 0560–0161, as identified above, is needed in order for FSA to effectively administer the regulation relating to the servicing of delinquent direct FSA farm loans. The information is collected by the loan official in order to document the

borrower's eligibility for specific loan servicing actions. The reporting requirements imposed on the public by the regulations set out in 7 CFR 1951–S are necessary to administer the loan program in accordance with statutory requirements, are consistent with commonly performed lending practices, and are necessary to protect the Government's financial interest.

This proposed rule—to provide for the exclusion of the value of some capital improvements when determining the amount of shared appreciation recapture due, reduce the term of the Shared Appreciation Agreement, and reduce the interest rate on amortized shared appreciation amounts—is expected to result in no increase in the number of applicants for loan servicing nor increase the time required to apply. The other information collection requirements approved under this control number will not change. Therefore, no request for revision is being made.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.4 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 6,100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8,588 hours.

Proposed topics for comment include: (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. Comments should be sent to the, Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Agriculture, Washington, DC 20503 and to Michael C. Cumpton, Senior Loan Officer, USDA, FSA, Farm Loan Programs Loan Servicing Division, Farm Service Agency, USDA, 1400 Independence Ave., SW, STOP 0523, Washington, DC 20250–0523: Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.407—Farm Ownership Loans

Discussion of the Proposed Rule

The Shared Appreciation Agreement was first issued by the Farmers Home Administration (now the Farm Service Agency (FSA)) as an exhibit to 7 CFR part 1951, subpart S in accordance with the Agricultural Credit Act of 1987 to enable the Agency to recapture a portion of the government debt that was written down from farm loan programs that assisted delinquent or financially distressed family farmers. Writedown options include partial debt forgiveness if the borrower can show a positive cash flow on the ongoing farm operation and the action is in the best financial interest of the Government. In those instances where FSA forgives debt through a debt writedown and has real estate security, the borrower enters into a Shared Appreciation Agreement with the Government so FSA can share in any future appreciation of the real estate. Currently, over 11,900 Shared Appreciation Agreements have been executed on debt writedown of over $1.7 billion. Approximately 6,500 of these agreements are currently in effect and will become due over the next 10 years. The agreement states that if repayment is triggered within 4 years of entering into the agreement, the borrower owes the Agency 75 percent of any positive appreciation of the real estate security and 50 percent if the agreement is triggered after 4 years. In its present form, the Shared Appreciation Agreement states that repayment can be triggered if the Agency accelerates the promissory notes or the borrower pays in full, stops farming, or conveys the property. If none of these actions occurs in a 10 year period and the Shared Appreciation Agreement reaches maturity, then repayment is automatically due. The maximum amount to be recaptured cannot exceed the amount of the writedown received by the borrower. Currently under § 1951.914(e) (63 FR 6627, 6629, February 10, 1998), if the Shared Appreciation Agreement is triggered by some action other than acceleration, satisfaction of the debt, or the cessation of farming, the amount due can be amortized for up to 25 years at nonprogram rates if the borrower can develop a farm business plan with a positive cash flow.

FSA proposes three changes to 7 CFR part 1951, subpart S. The term of new Shared Appreciation Agreements will be reduced to 5 years. This will reduce the burden of the Agency in monitoring the Shared Appreciation Agreements and allow the farmer to plan for the future without a contingent liability in the distant future. Next, allowances will be made for certain capital improvements made to property covered by an existing or future Shared Appreciation Agreement. The contributory value of capital improvements will be deducted from the appraised value calculated at the time of the triggering event or at the end of the agreement and will reduce the amount due. The Agency proposes that this rule will allow a deduction for the value of certain improvements involved in all Shared Appreciation Agreements that have matured, provided that there has been no agreement or resolution to pay the amount due, and all future agreements. The proposal allows farmers to develop and better maintain their real estate. This proposed rule intends changes to FSA direct loans only. The term reduction and value of capital improvement exclusion may be considered in a separate rulemaking document involving the FSA Guaranteed Loan Program. However, any comments on this modification as it applies to the Guaranteed Loan Program will also be considered. Finally, the agency proposes that the interest rate charged on Shared Appreciation loans, which are approved when a borrower cannot pay the shared appreciation due, will be reduced from the current nonprogram rate to near the Federal borrowing rate. This will allow borrowers easier access to the amortization option and, in turn, allow greater government recapture on debt writedowns.

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs—agriculture, Loan programs—housing and community development.

Accordingly, 7 CFR part 1951 is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart S—Farm Loan Programs Account Servicing Policy

2. Amend § 1951.914 by revising paragraphs (b) introductory text, (c)(1), (e)(6) and (e)(9) to read as follows:

§ 1951.914 Servicing shared appreciation agreements.

* * * * *

(b) *When shared appreciation is due.* Shared Appreciation is due at the end of the 5 year term of the Shared Appreciation Agreement, or sooner, if one of the following events occurs:

* * * * *

(c) * * *

(1) The current market value of the real estate property will be determined based on a current appraisal. If a dwelling, barn, grain storage bin, or silo was constructed on the property during the term of the Shared Appreciation Agreement, its contributory value, as determined by an FSA appraisal, will be deducted from the value of the property for calculation of appreciation. If the new item is a replacement for a like item that existed when the Shared Appreciation Agreement was executed or the original item was notably expanded, such as the addition of rooms to a home, only the value added by the new or expanded item that increases the value of the original item will be deducted from the current market value. If only a portion of the real estate is being sold, or has been sold, an appraisal will be done only on the real estate being considered for release. In the event of a partial sale, an appraisal may be required to determine the market value of the property at the time the Shared Appreciation Agreement was signed if such value cannot be obtained through another method.

* * * * *

(e) * * *

(6) The interest rate will be the Farm Program Homestead Protection rate contained in RD Instruction 440.1 (available in any FSA office.)

* * * * *

(9) Unless serviced in accordance with this paragraph, the loan for the repayment of the shared appreciation amount will be closed and serviced in accordance with subpart J of this part. If the borrower has outstanding Farm Loan Programs loans, and becomes delinquent or financially distressed in accordance with § 1951.906, the loan for the repayment of the Shared Appreciation Agreement may be considered for reamortization as set forth in § 1951.909(e).

Signed in Washington, DC, on October 31, 1999.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 99–29396 Filed 11–9–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 99–045P]

Fee Increase for Meat and Poultry Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to increase the fees FSIS charges meat and poultry establishments, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. These fee increases reflect the increased cost of inspection, the national and locality pay raise for Federal employees (proposed 4.8 percent effective January 2000), the increased laboratory costs, and the applicable travel and operating costs. FSIS is proposing to make the fee increases effective January 2, 2000. At this time, FSIS is not proposing to amend the fee for the Accredited Laboratory Program.

DATES: Comments must be received by December 10, 1999.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #99–045P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250, (202) 720–5627, fax number (202) 690–0486.

For information concerning fee development, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2130–S, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–3552.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) provide for mandatory inspection by Federal inspectors of meat and poultry slaughtered or processed at official establishments. Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry. The cost of mandatory inspection (excluding such services performed on holidays or on an overtime basis) is borne by FSIS.

In addition to mandatory inspection, FSIS provides a range of voluntary inspection, certification, and identification services for meat and poultry. Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides these services to assist in the orderly marketing of various animal products and byproducts not subject to the FMIA or the PPIA. These services include the certification of technical animal fats and the inspection of exotic animal products. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

FSIS also provides certain voluntary laboratory services that establishments or others may request FSIS to perform. The cost of these services, which are provided under the Agricultural Marketing Act of 1946, must be recovered by FSIS. Laboratory services are provided for four types of analytic testing. These are: microbiological testing, residue chemistry tests, food composition tests, and pathology testing.

Each year, FSIS expects to review the fees that it charges for providing overtime and holiday inspection services, voluntary inspection, identification, and certification services, and laboratory services, and to perform a cost analysis to determine whether the fees it has established are adequate to recover the costs that it incurs in providing the services. In its analysis of projected costs for January 1, 2000 to September 30, 2000, FSIS has identified increases in the costs that it will incur. FSIS is not proposing an increase in the fees for full calendar year 2000 because FSIS intends to propose a new fee

increase each Federal Fiscal Year (FY), i.e., the next fee increase after this proposed one should be effective on October 1, 2000. The proposed fee increases are attributable to the increased cost of inspection, the national and locality pay raise for Federal employees (proposed 4.8 percent effective January 2000), the increased laboratory costs, and the applicable travel and operating costs.

Accordingly, FSIS is proposing to amend 9 CFR section 391.2 to increase the base time fee for providing meat and poultry voluntary inspection, identification, and certification services from $37.00 per hour per program employee to $37.88 per hour per program employee (an increase of 2.38%). FSIS is also proposing to amend § 391.3 to increase the rate for providing meat and poultry overtime and holiday inspection services from $36.84 per hour per program employee to $39.76 per hour per program employee (an increase of 7.93%). Additionally, FSIS is proposing to amend § 391.4 to increase the rate for meat and poultry laboratory services from $50.88 per hour per program employee to $58.52 per hour per program employee (an increase of 15.02%). The increase in base time and overtime and holiday time rates is proportional to the salary increase and the inflation index rate recommended by the Office of Management and Budget for overhead costs (applicable travel and operating costs). The larger fee increase in laboratory services relative to the other two fees is due to (1) an increase in the direct costs of laboratory services and (2) a decrease in the hours of activity. The lower the usage, the higher the fee, because there are less hours over which to distribute the overhead costs.

The differing fee increase for each type of service is the result of the different amount it costs FSIS to provide these three types of services. These differences in costs stem from various factors including the differing salary levels of the personnel who provide the services.

These fees and the proposed increase are reflected in Table 1.

TABLE 1.—INSPECTION SERVICE TYPE AND CURRENT AND PROPOSED RATES FOR 1/1/00 TO 9/30/00

Service type	Current rate $/hour	Proposed Year 2000 rate $/hour	Proposed increase $/hour
Base time	37.00	37.88	.88
Overtime and Holiday	36.84	39.76	2.92
Laboratory	50.88	58.52	7.64

Beginning with the FY 2001, FSIS intends to propose adjustments in its fees for voluntary and reimbursable inspections effective each October 1. This approach will facilitate more consistent and timely proposals to adjust fees, and will assist the Agency and affected industry to plan for these fee adjustments.

Executive Order 12866 and Regulatory Flexibility Act

Because this proposed rule has been determined to be not significant, it was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

The Administrator, FSIS, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the *Regulatory Flexibility Act* (5 U.S.C. 601). The fee increases provided for in this document reflect a small increase in the costs currently borne by those entities which elect to utilize certain inspection services *voluntarily*. These voluntary services are generally sought by larger establishments because of larger production volume or because of greater complexity and diversity in the products they produce; the small establishments do not seek these services perhaps because they cannot afford them. Therefore, the small establishments are not likely to be affected adversely by the increases.

The extent of incremental adverse impact is estimated from the proposed percentage increases in base time and overtime and holiday rates. The increase in base time rate from $37.00/hour to $37.88/hour amounts to 2.38 percent. The overtime and holiday services rate from $36.84 to $39.76 amounts to 7.93 percent or about 8 percent. These increases are consistent with similar increases in wages and overtime rates in the private sector. For example, according to the Bureau of Labor Statistics web site, the average wage, including overtime, in the poultry slaughtering and processing industry (SIC 2015) increased by about 5 percent (from $344.73 per week in July 1998 to $361.70 in July 1999). The average hourly wage, excluding the overtime rate, increased by 4 percent during the same period. The increase in laboratory fees of 15.02 percent (from $50.88/hour to $58.52/hour) reflects an increase in the direct cost of these services to FSIS, coupled with lower usage by industry.

The economic impact of the increase in the fees on small businesses in the meat and poultry industries would depend on the structure of these industries. Data from the U.S. Bureau of the Census, Survey of Industries, 1994, indicate that the meat industry is dominated by small firms and establishments relative to the poultry industry. For example, based on the U.S. Small Business Administration's (SBA) definition of small business by the number of employees (fewer than 500), 96 percent of 1,226 firms comprising the meat industry (SIC 2011) are small. Similarly, 90 percent of individual meat establishments or plants in this industry are small. In 1994, these small businesses accounted for 19 percent of total employment in this industry. Their share of payroll was 18 percent of the total payroll of $2.777 billion and their revenues were 16 percent of the total revenues of $55.814 billion. In contrast, the poultry industry is comprised of relatively larger firms and establishments. For example, 51 percent of 567 establishments in this industry are large, according to the SBA definition. This industry has 332 firms with 207,875 workers and a payroll of $3.5 billion. The estimated revenue of this industry amounted to $27.111 billion in 1994.

FSIS believes that the small establishments in the meat and poultry industry would not be affected adversely by the proposed increases in the fees for four reasons. First, the fee increases are voluntary so that the establishments do not have to seek the services of FSIS inspector program personnel. Second, establishments that seek FSIS services are likely to have calculated that the incremental costs of voluntary inspection services would be less than the incremental expected benefits of additional revenues they

would realize from additional production. Third, the industry is likely to pass through the costs to consumers without significantly losing its market because price elasticity of demand for meat and poultry is inelastic. For example, Huang (1993) analyzed demand for meats and other products containing meat and poultry. Huang concluded that the price elasticity was −0.36, *i.e.*, an increase in price of meat or poultry products by one percent would be associated with a decrease in its demand by only 0.36 percent. (Huang, Kao S., *A Complete System of U.S. Demand for Food.* USDA/ERS Technical Bulletin No. 1821, 1993, p. 24). In short, consumers are unlikely to reduce their demand for meat and poultry significantly when meat or poultry prices are increased by a few pennies a pound. Finally, the supply of beef and poultry products is likely to be very price elastic because, as noted above, there are hundreds of firms in these industries. Any single producer cannot raise the price of its products without losing its market share significantly.

Executive Order 12988

This proposed rule has been reviewed by FSIS under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 of the FMIA and PPIA regulations, respectively, must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Additional Public Notification

Pursuant to Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' dated September 22, 1993, FSIS has considered the potential civil rights impact of this proposed rule on minorities, women, and persons with disabilities. FSIS anticipates that this proposed rule will not have a negative or disproportionate impact on minorities, women, or persons with disabilities. However, proposed rules generally are designed to provide information and receive public comments on issues that may lead to new or revised agency regulations or instructions. Public involvement in all segments of rulemaking and policy development are important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Executive Order 12898, Environmental Justice

Currently, FSIS has no data on the number of minority-owned FMIA or PPIA official establishments, nor can the Agency identify which FMIA or PPIA official establishments are minority owned. The Agency is looking into ways of collecting such data.

List of Subjects in 9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY SERVICES

1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 are proposed to be revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $37.88 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 shall be $39.76 per hour per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12 and 362.5 shall be $58.52 per hour per program employee.

Done in Washington, DC on: November 5, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–29418 Filed 11–9–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–21]

Proposed Establishment of Class E Airspace; Okeechobee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Okeechobee, FL. A Global Positioning System (GPS) Runway (RWY) 4 Standard Instrument Approach Procedure (SIAP) has been developed for Okeechobee County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Okeechobee County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before December 10, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–21, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ASO–21.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Okeechobee, FL. A GPS RWY 4 SIAP has been developed for Avon Park Municipal Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Okeechobee County Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulation action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ASO GA E5 Okeechobee, FL [New]

Okeechobee County Airport, FL
(Lat. 27°15′00″N, long. 80°51′01″W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.5-mile radius of Okeechobee County Airport.

* * * * *

Issued in College Park, Georgia, on November 1, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–29478 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release Nos. 34–42099; IA–1845; File No. S7–25–99]

RIN 3235–AH78

Certain Broker-Dealers Deemed Not To Be Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Broker-dealers have begun offering their customers full service brokerage (including advice) for an asset-based fee instead of traditional commissions, mark-ups, and mark-downs. Some full service broker-dealers have also begun offering electronic trading for reduced brokerage commissions. The Commission is publishing for comment a new rule under the Investment Advisers Act of 1940 (Advisers Act) that would address the application of the Advisers Act to brokers offering these programs. The new rule would keep broker-dealers from being subject to the Advisers Act solely as a result of re-pricing their services.

DATES: Comments must be received on or before January 14, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments may also be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–25–99; this File number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Cynthia M. Fornelli, Attorney Fellow, Division of Investment Management, (202) 942–0720, or J. David Fielder, Senior Counsel, Task Force on Investment Adviser Regulation, Division of Investment Management, (202) 942–0530, fielderd@sec.gov, at Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed rule 202(a)(11)–1 and a proposed amendment to the instructions for Schedule I of Form ADV [17 CFR 279.1], both under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (''Advisers Act'' or ''Act'').

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Executive Summary

Broker-dealers recently have begun to give their customers the option of paying for brokerage services in different ways. In addition to traditional commission-based brokerage, customers can now pay for securities transactions, related advice, and other services by paying a fee that is a fixed dollar amount or based on a percentage of assets held on account with the broker-dealer. Customers can also pay a reduced commission for electronic trading without the assistance and advice of a registered representative.

While these new programs promise to benefit broker-dealer customers by aligning their interests more closely with those of the brokerage firm and its registered representatives, they may also subject the broker-dealers to regulation under the Advisers Act as well as the Securities Exchange Act of 1934 (Exchange Act). The new programs essentially re-price traditional full service brokerage programs but do not fundamentally change their nature. Therefore, we are proposing to use our authority under the Act to adopt a rule that would keep broker-dealers from being subject to the Advisers Act when they offer these programs.

Under the proposed rule, a broker-dealer providing investment advice to customers, regardless of the form of its compensation, would be excluded from the definition of investment adviser as long as: (i) The advice is provided on a non-discretionary basis; (ii) the advice is solely incidental to the brokerage services; and (iii) the broker-dealer discloses to its customers that their accounts are brokerage accounts. The rule also would keep a broker-dealer providing advice to customers from being subject to the Advisers Act solely because it also offers execution-only brokerage services at reduced commission rates. Finally, the proposed rule will clarify that broker-dealers that are subject to the Advisers Act are subject to the Act only with respect to advisory clients. We are also proposing to amend the instructions for Form ADV under the Advisers Act to clarify how broker-dealers calculate the aggregate assets under management of their advisory clients for determining whether they must register with the Commission.

Until the Commission takes final action on the proposed rule, the Division of Investment Management will not recommend, based on the form of compensation received, that the Commission take any action against a broker-dealer for failure to treat any account over which the broker-dealer does not exercise investment discretion as subject to the Act.

I. Background

The Advisers Act regulates the activities of certain ''investment advisers,'' which are defined in Section 202(a)(11) as persons who receive compensation for providing advice about securities as part of a regular business.[1] Section 202(a)(11)(C) of the Advisers Act excepts from the definition a broker or dealer ''whose performance of [advisory] services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor.'' [2] The broker-dealer exception ''amounts to a recognition that brokers and dealers commonly give a certain amount of advice to their customers in the course of their regular business and that it would be inappropriate to bring them within the scope of the [Advisers Act] merely because of this aspect of their business.'' [3]

Many securities firms currently are registered with us under both the Exchange Act [4] (as broker-dealers) and the Advisers Act (as advisers), but treat only certain of their accounts as subject to the Advisers Act. We have viewed the Advisers Act as applying only to those persons to whom the broker-dealer provides investment advice that is *not* incidental to brokerage services or for which the firm receives special compensation.[5] The protections of the Advisers Act and our rules must only be afforded those persons (''advisory clients''). For example, only advisory clients must be delivered an informational brochure.[6]

Recently, several full service brokerage firms have introduced or announced new types of brokerage programs that raise questions as to whether they are receiving special compensation and, as a result, whether they continue to be eligible for the broker-dealer exception to the Advisers Act. In the case of broker-dealers

[1] 15 U.S.C 80b–2(a)(11). For a discussion of this definition and the scope of the Advisers Act, see Investment Advisers Act Release No. 1092 (Oct. 8, 1987) [52 FR 38400 (Oct. 16, 1987)].

[2] 15 U.S.C. 80b–2(a)(11)(C). A person (including a broker-dealer) that falls within the definition of investment adviser in Section 202(a)(11) (and is not excepted) must register with the Commission unless one of the exemptions from registration in Section 203(b) [15 U.S.C. 80b–3(b)] is available or the person is prohibited from registering with us by Section 203A [15 U.S.C. 80b–3A] because they are a state-regulated adviser. *See Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)].

[3] *Opinion of General Counsel Relating to Section 202(a)(11)(C) of the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 2 (Oct. 28, 1940) [11 FR 10996 (Oct. 28, 1940)] (''Release No. 2'').

[4] 15 U.S.C. 78a.

[5] *Final Extension of Temporary Rule*, Investment Advisers Act Release No. 626 (Apr. 27, 1978) [43 FR 19224 (May 4, 1978)] (''Release No. 626'').

[6] Rule 204–3 [17 CFR 275.204–3]. Additionally, advisory clients must receive, among other things, certain disclosures about their investment adviser, including disclosure about the firm's conflicts of interest, other business activities and affiliations, disciplinary history and, in some cases, financial condition. Rule 206(4)–4 [17 CFR 275.206(4)–4]. Advisory clients' accounts also have restrictions on effecting principal trades. 15 U.S.C. 80b–6(3).

already registered under the Act, these programs raise the question of whether customers selecting these new programs must be treated as advisory clients. For convenience, we will refer to these programs as ''fee-based programs.'' [7]

Fee-based programs offer customers a package of brokerage services—including execution, investment advice, custodial and recordkeeping services—for a fixed fee or a fee based on the amount of assets on account with the broker-dealer. In some programs, broker-dealers also assess a fixed charge for each transaction.[8] These fee-based programs benefit customers by better aligning their interests with those of their broker-dealers, and thus are responsive to the best practices suggested in the Report of the Committee on Compensation Practices (''Tully Report'').[9] Under these programs, broker-dealers'' and their registered representatives' compensation no longer depends on the number of transactions or the size of mark-ups or mark-downs charged, thus reducing incentives for registered representatives to churn accounts, recommend unsuitable securities, or engage in high-pressure sales tactics. The Commission welcomes the introduction of these programs, which may reduce substantially conflicts between broker-dealers and their customers.

Some full service brokerage firms are also ''unbundling'' brokerage services, giving customers the option of purchasing execution-only services at a reduced commission rate.[10] These execution-only programs often give customers the ability to trade securities over the Internet without the assistance of a registered representative. These programs offer customers who do not want or need investment advice the ability to trade securities at a lower commission rate.[11]

Both types of programs may result in the loss of the broker-dealer exception to the Advisers Act. Fee-based compensation may constitute special compensation under the Act because it involves the receipt by a broker of compensation other than traditional brokerage commissions.[12] In addition, the introduction of execution-only services at a lower commission rate may trigger application of the Act to the full service accounts for which the broker provides some investment advice. This is because the difference between full service and execution-only commission rates represents a clearly definable portion of a brokerage commission that is attributable, at least in part, to investment advice. We have viewed such a two-tiered fee structure as an indication of ''special compensation'' under the Advisers Act.[13]

These new programs are not, however, fundamentally different from traditional brokerage programs not subject to the Advisers Act. Fee-based brokerage programs offer the same package of services as traditional full-service broker-dealer programs. Execution-only programs do not offer *any* advisory service, but merely make visible that which has always been apparent—a portion of commissions charged by full service broker-dealers compensated the broker-dealer for advisory services. The re-pricing of traditional brokerage services in the fee-based programs has regulatory implications only because the broker-dealer exception is limited to broker-dealers not receiving special compensation.

As discussed above, we believe that broker-dealers offering fee-based programs may be receiving ''special compensation'' under the Advisers Act. We do not believe, however, that Congress intended these programs, which are not substantially different from traditional brokerage arrangements, to be subject to the Act. While in 1940 the form of compensation a broker-dealer received may have been a reliable distinction between brokerage and advisory services, development of the new brokerage programs suggest strongly that it is no longer. Moreover, we are concerned that, as a result of these new programs, most brokerage arrangements by full service broker-dealers may be subject to regulation under both the Advisers Act and the Exchange Act, a result Congress could not have intended. We are therefore proposing a new rule, described below, that would deem a broker-dealer not to be an adviser solely as a result of receiving special compensation, provided certain conditions are met. The proposed exception would be limited to circumstances where the Commission believes that Congress did not intend to apply the Advisers Act.

II. Discussion

A. Broker-Dealers Deemed Not To Be Investment Advisers

The Commission is proposing new rule 202(a)(11)–1 under the Advisers Act. The rule is designed to avoid application of the Advisers Act to broker-dealers solely because they re-price their full-service brokerage or provide execution-only services in addition to full service brokerage. The rule would also codify our long-standing view of how the Act applies to broker-dealers that are registered advisers.

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[7] For ease of discussion, we assume in the discussion below that broker-dealers offering fee-based programs are currently registered with us under the Advisers Act as a result of advisory activities unrelated to these programs. For broker-dealers that are not currently registered with us under the Advisers Act, fee-based programs present a first question of whether they are subject to the Act and, if so, whether they must register with us as an adviser.

[8] ''Merrill Adapting to New Breed of Investors,'' *The Deseret News (Salt Lake City, UT)*, July 18, 1999; ''A New Order for Brokers,'' *Los Angeles Times*, July 4, 1999; ''Prudential Rolls Out Fee-Plus Pricing Alternative,'' *Registered Representative*, July 1999; ''Charley's Web: Drawing Rivals into the Internet, Schwab Takes its Biggest Risk,'' *Investment Dealers Digest*, June 21, 1999; ''Online Trading Forces Brokerages to Change,'' *Star Tribune (Minneapolis, MN)*, June 7, 1999.

[9] The Tully Report was prepared by a committee formed in 1994 at the request of Chairman Arthur Levitt to identify the brokerage industry's ''best practices.'' *Report of the Committee on Compensation Practices*, Apr. 10, 1995. *See also* ''You Should Get What You Pay for—and Vice Versa,'' *Los Angeles Times*, July 4, 1999; ''No More Portfolio-Churning Broker-Dealers,'' *The Washington Post*, June 7, 1999.

[10] ''Merrill Adapting to New Breed of Investors,'' *The Deseret News (Salt Lake City, UT)*, July 18, 1999.

[11] Some discount brokers are now providing some advice to their brokerage customers. ''Charley's Web: Drawing Rivals into the Internet, Schwab Takes its Biggest Risk,'' *Investment Dealers Digest*, June 21, 1999. The distinctions between full service brokerage firms and discount brokerage firms are thus becoming blurred.

[12] *See Committee on Banking and Currency, Investment Company Act of 1940 and Investment Advisers Act of 1940*, Report No. 1775, 76th Cong., 3d Sess. 22 (June 6, 1940) (section 202(a)(11)(C) applies to broker-dealers ''insofar as their advice is merely incidental to brokerage transactions for which they receive brokerage commissions''). *See also Financial Planners: Report of the Staff of the United States Securities and Exchange Commission to the House Committee on Energy and Commerce's Subcommittee on Telecommunications and Finance*, February 1988 (Appendix B) (''[Special compensation] has been interpreted to exclude ordinary brokerage commissions * * * unless a 'clearly definable' part of the commission is for investment advice.'')

Five years ago we adopted rules for broker-sponsored wrap fee programs based on our conclusion that wrap fees constitute special compensation. *Disclosure by Investment Advisers Regarding Wrap Fee Programs*, Investment Advisers Act Release No. 1401 (Jan. 13, 1994) at n.2 (proposing amendments to Form ADV) [59 FR 3033 (Jan. 20, 1994)]; Investment Advisers Act Release. No. 1411 (Apr. 19, 1994) (adopting amendments to Form ADV) [59 FR 21657 (Apr. 26, 1994)]. *See also National Regulatory Services*, SEC No-Action Letter (Dec. 2, 1992). The *compensation* in the new, fee-based programs is indistinguishable from wrap fee compensation.

[13] Release 626, *supra* at note 5. *See also* Release No. 2, *supra* at note 3; *Robert S. Strevell*, SEC No-Action Letter (Apr. 29, 1985) (''If two general fee schedules are in effect, either formally or informally, the lower without investment advice and the higher with investment advice, and the difference is primarily attributable to this factor, there is special compensation.'')

1. Fee-Based Brokerage Programs

Under the proposed rule, a broker-dealer providing investment advice to its brokerage customers would not be required to treat those customers as advisory clients solely because of the form of the broker-dealer's compensation. The proposed rule would be available to broker-dealers registered under the Exchange Act that satisfy three conditions: (i) The broker-dealer must not exercise investment discretion over the account from which it receives special compensation; (ii) any investment advice is incidental to the brokerage service provided to each account; and (iii) advertisements for and contracts or agreements governing the account must contain a prominent statement that it is a brokerage account.[14]

Under the rule, the nature of the services provided, rather than the form the broker-dealer's compensation takes, would be the primary feature distinguishing an advisory account from a brokerage account. Discretionary accounts that are charged an asset-based fee would be considered advisory accounts because they bear a strong resemblance to traditional advisory accounts, and it is highly likely that investors will perceive such accounts to be advisory accounts.[15] Under the statute, however, discretionary accounts from which a broker-dealer does not receive special compensation, *e.g.*, accounts that pay commissions, would still be treated as brokerage accounts not subject to the Act. In this respect, a regulatory distinction would continue to be drawn based solely on the pricing of an advisory service. We request comment on whether this remains an appropriate distinction. Should all discretionary accounts of broker-dealers be treated as advisory accounts?[16]

The proposed rule would include the requirement, taken from the broker-dealer exception, that the advisory services provided the account be incidental to the brokerage services provided.[17] The rule would clarify that the advice the broker-dealer provides must be incidental to brokerage services provided by the broker-dealer to *each* account rather than the overall operations of the broker-dealer.

Finally, the proposed rule would require that all advertisements for the accounts and all agreements and contracts governing the operation of the accounts contain a prominent statement that the accounts are brokerage accounts.[18] We have observed that some broker-dealers offering these new accounts have heavily marketed them based on the advisory services provided rather than the execution services, which raises troubling questions as to whether the advisory services are not (or will be perceived by investors not to be) incidental to the brokerage services. We have, however, never viewed the broker-dealer exception as precluding a broker-dealer from marketing itself as providing some amount of advisory services.[19] Comment is requested as to whether, instead of the proposed disclosure, we should preclude brokers from relying on the rule if they market these accounts in such a way as to suggest they are advisory accounts.

Under the proposed rule, broker-dealer sponsors of wrap fee programs would continue to treat wrap fee accounts as advisory accounts.[20] Wrap fee program sponsors that also provide portfolio management services typically have discretionary authority over the accounts, and thus could not use the rule. In many cases, sponsors of wrap fee programs execute transactions for wrap accounts and provide some non-discretionary advisory services such as asset allocation or selection of portfolio managers. The sponsors do not themselves have discretionary authority, which is delegated to an advisory firm that receives a portion of the wrap fee. In these cases, the non-discretionary advisory services provided by the sponsor could not be viewed as incidental to the brokerage services.[21]

2. Execution-Only Brokerage Programs

Proposed rule 202(a)(11)–1 would also keep a full service broker-dealer from being subject to the Act solely because it also offers execution-only brokerage.[22] Conversely, a discount broker would not be subject to the Act solely because it introduces a full service brokerage program. Under the rule, a broker-dealer would not be considered to have received special compensation solely because the broker-dealer charges a commission, mark-up, mark-down or similar fee for brokerage services that is greater than or less than one it charges another customer. Thus, a broker-dealer would be able to offer both full-service and execution-only brokerage without losing the broker-dealer exception. This provision would make a broker-dealer's eligibility for the broker-dealer exception with respect to an account turn on the characteristics of that account and not others.

3. Scope of Broker-Dealer Exception

As discussed above, a broker-dealer registered under both the Exchange Act (as a broker-dealer) and the Advisers Act (as an adviser) need not treat all of its customers as advisory clients. We have viewed the Advisers Act as applying only to those customers to whom the broker-dealer provides advice that is *not* incidental to brokerage services or for which the firm receives special compensation.[23] We have included a provision in the proposed rule codifying this view.[24]

B. Calculation of Assets Under Management for Broker-Dealers

Generally, only investment advisers with at least $25 million of assets under management must register with the

[14] Proposed rule 202(a)(11)–1(a)(1)–(3).

[15] *See* Release 626, *supra* at note 5.

[16] In Release 626, *supra* at note 5, we stated that broker-dealer relationships ''which include discretionary authority to act on a client's behalf have many of the characteristics of the relationships to which the protections of the Advisers Act are important,'' and indicated that we were considering taking action that would make the broker-dealer exception not available to broker-dealers that exercised discretionary authority. We also noted in Release 626 the staff's position that broker-dealers whose business consists almost exclusively of managing accounts on a discretionary basis are not providing advice solely on an incidental basis, and thus are subject to the Advisers Act.

[17] Proposed rule 202(a)(11)–1(a)(2).

[18] Proposed rule 202(a)(11)–1(a)(3). An advertisement would include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television. *See* Rule 206(4)–1(b) [17 CFR 275.206(4)–1(b)] (defining the term ''advertisement'').

[19] *See Elmer D. Robinson,* SEC No-Action Letter (Jan. 6, 1986); *Nathan & Lewis,* SEC No-Action Letter (Apr. 4, 1988). However, a broker-dealer that employs terms such as ''financial planner'' merely as a device to induce the sale of securities might violate the antifraud provisions of the Securities Act of 1933 and the Exchange Act. *Cf. In re Haight & Co., Inc.*, Securities Exchange Act Release No. 9082 (Feb. 19, 1971) (Broker-dealer defrauded its customers in the offer and sale of securities by holding itself out as a financial planner that would give comprehensive and expert planning advice and choose the best investments for its clients from all available securities, when in fact it was not an expert in planning and made its decisions based on the receipt of commissions and upon its inventory of securities.)

[20] Sponsors must, therefore, continue to deliver to wrap fee clients a wrap fee brochure required by Rule 204–3(f) under the Advisers Act [17 CFR 275.204–3(f)]. *See also* Schedule H of Form ADV [17 CFR 279.1] (prescribing contents of a wrap fee brochure).

[21] The brokerage transactions executed by the sponsor are initiated by the third-party portfolio manager, and not the sponsor. *See generally, National Regulatory Services,* SEC No-Action Letter (Dec. 2, 1992) (wrap fee program is not solely incidental to the sponsor's business as a broker-dealer); ''Mutual Fund Blues? Try a 'Wrap,''' *Business Week,* July 12, 1999 (''[B]rokerage firms also offer annual asset-based fees as an alternative to charging commissions on each trade [but] the accounts don't offer the same services [as wrap accounts].'')

[22] Proposed rule 202(a)(11)–1(b).

[23] Release No. 626, *supra* at note 5.

[24] Proposed rule 202(a)(11)–1(c).

Commission.[25] Advisers with fewer assets under management generally must register with one or more state securities authorities.[26] The staff has taken the position that broker-dealers may include in their calculation of assets under management the value of brokerage accounts that receive continuous and regular supervisory or management services.[27] We are proposing to codify this position by amending the instructions to Schedule I of Form ADV, but limiting it to accounts over which broker-dealers exercise investment discretion.[28]

III. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule that is the subject of this release, or submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also is requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Paperwork Reduction Act

Certain provisions of proposed Rule 202(a)(11)–1 contain a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 to 3520), and the Commission has submitted it to the Office of Management and Budget in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Certain Broker-Dealers Deemed Not To Be Investment Advisers.'' An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Broker-dealers taking advantage of the proposed rule would need to maintain certain records that establish their eligibility to do so, but rules under the Exchange Act already require the maintenance of those records. Specifically, broker-dealers are currently required to maintain all ''evidence of the granting of discretionary authority given in any respect of any account'' [29] and all ''written agreements * * * with respect to any account.'' [30] Therefore, the proposed rule will not increase the recordkeeping burden for any broker-dealer.

For an account to which the proposed rule applies, advertisements [31] and contracts or agreements must include a prominent statement that the account is a brokerage account.[32] This information is necessary to prevent customers and prospective customers from mistakenly believing that the account is an advisory account subject to the Advisers Act and will be used to assist clients in making an informed decision on whether to establish an account. We believe that the burden to comply with this provision of the rule is insignificant. In preparing model contracts and advertisements, for example, compliance officials would be required to verify that the appropriate disclosure is made. For purposes of the Paperwork Reduction Act, the average annual burden for ensuring compliance is 5 minutes per broker-dealer taking advantage of the proposed rule. If all of the approximately 8,500 broker-dealers registered with us took advantage of the rule, the total estimated annual burden would be 706 hours (.083 hours x 8,500 brokers). At an assumed $120 per hour those 706 hours would cost $84,720. We request comment on these figures.

The collection of information requirements under the proposed rule are mandatory. In general, the information collected pursuant to the proposed rule would be held by the broker-dealers. The Commission, self-regulatory organizations, and other securities regulatory authorities would only gain possession of the information upon request. Any information received by the Commission related to the proposed rule would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

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 proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (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, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Stop 6–9, Washington, D.C. 20549 with reference to File No. 270–471. OMB is required to make a decision concerning the collection of information requirements between 30 and 60 days after publication. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost-Benefit Analysis

The proposed rule would keep broker-dealers from being subject to the Advisers Act solely as a result of re-pricing their full-service brokerage services. Proposed rule 202(a)(11)–1 would have no effect on the regulatory burden borne by investment advisers because it only operates to exempt from the Advisers Act certain brokerage accounts. For broker-dealers that would otherwise be subject to the Advisers Act, the proposed rule would reduce

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[25] 15 U.S.C. 80b–3A (prohibiting advisers without assets under management of $25 million or more or that do not advise a registered investment company from registering with the Commission). The Commission has adopted a rule that exempts certain types of advisers from this prohibition. 17 CFR 275.203A–2.

[26] *Id.*

[27] *See* <http://www.sec.gov/rules/othern/advfaq.htm#asst>, ''Assets Under Management,'' Question No. 5.

[28] Broker-dealers that are also registered with us as investment advisers may, in certain circumstances, be requested during the course of investment adviser inspections by Commission staff, to provide certain information and records related to their brokerage clients over whose accounts they exercise investment discretion. For example, such information and records may be necessary for an evaluation of the reported amount of assets under management that receive continuous and regular supervisory or management services.

[29] 17 CFR 240.17a–4(b)(6). Proposed rule 202(a)(11)–1(a)(1) limits its application to accounts that a broker-dealer does not exercise investment discretion over.

[30] 17 CFR 240.17a–4(b)(7). Proposed rule 202(a)(11)–1(a)(3) requires a prominent statement be made in agreements governing the accounts to which the rule applies.

[31] Broker-dealers already are required to maintain records regarding their advertisements under existing self-regulatory organizations' rules.

[32] The Commission estimates that the current annual burden for the approximately 8,500 broker-dealers registered with us related to the maintenance of these, and other records required by the Commission is approximately 2.1 million hours. This is the current burden estimate for Rule 17a–4. It includes the estimated burden from complying with Rule 17a–4's requirements to maintain certain records unrelated to this rule, such as customer communications, order tickets, and transaction confirmations.

their regulatory burden.[33] Thus, the benefits to broker-dealers to which the proposed rule would apply are substantial in terms of avoiding an increased regulatory burden stemming from re-pricing their brokerage services.

Substantial benefits for individual investors from the repricing of brokerage services, and therefore from the proposed rule which eliminates unintended regulatory disincentives to that repricing, are expected. Under the fee-based programs discussed above, a broker-dealer's or registered representative's compensation no longer depends on the number of transactions or the size of mark-ups or mark-downs charged, thus reducing incentives for a registered representative to churn accounts, recommend unsuitable securities, or engage in high-pressure sales tactics. Thus, these programs may better align the interests of broker-dealers and their customers.

While the benefits of the proposed rule are substantial (although difficult to quantify), the incremental costs associated with the rule are small. Broker-dealers taking advantage of the rule will need to maintain certain records establishing their eligibility for the rule (*e.g.,* contracts or agreements governing the accounts and advertisements related to the accounts), but rules under the Exchange Act already require the maintenance of those records. Thus, the only incremental cost associated with the rule is the cost of adding a statement to those documents that the accounts are brokerage accounts. As discussed in the Paperwork Reduction Act analysis above, we believe this cost is insignificant.

Comment is requested on issues relating to the proposed rule's costs and benefits. Commenters are requested to provide views and empirical data relating to any costs and benefits associated with the proposed rule and form amendment.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding proposed rule 202(a)(11)–1.

A. Reasons for Proposed Action

Broker-dealers recently have begun to give their customers the option of paying for securities transactions, related advice, and other services by paying a fee that is a fixed dollar amount or based on a percentage of assets held on account with the broker-dealer. While these new programs promise to benefit broker-dealer customers by aligning their interests more closely with those of the brokerage firm and its registered representatives, they may also subject the broker-dealers to regulation under the Advisers Act. The new programs essentially re-price traditional full service brokerage programs but do not fundamentally change their nature. Subjecting broker-dealers that offer these programs to the Advisers Act would impose unnecessary regulatory burdens on the provision of brokerage services contrary to the intent of Congress when it passed the Advisers Act.

B. Objectives and Legal Basis

The proposed rule is designed to prevent application of the Advisers Act to broker-dealers solely because they re-price their full-service brokerage or provide execution-only services in addition to full service brokerage. The rule would also codify certain long-standing positions regarding application of the Advisers Act to broker-dealers that are registered advisers. We are proposing the rule pursuant to our authority under sections 202(a)(11)(F)[34] and 211(a)[35] under the Act. Section 202(a)(11)(F) gives us authority to except, by rule or order, from the statutory definition of ''investment adviser'' persons not within the intent of that definition. Section 211(a) gives us authority to classify, by rule, persons and matters within our jurisdiction and to prescribe different requirements for different classes of persons, as necessary or appropriate to the exercise of our authority under the Act.

C. Small Entities Subject to Rule

For the purposes of the Exchange Act and the Regulatory Flexibility Act, a broker-dealer, under Commission rules, generally is a small entity if it had 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 and it is not affiliated with any person (other than a natural person) that is not a small entity.[36]

The Commission estimates that as of December 31, 1998, approximately 1,000 Commission-registered broker-dealers were small entities.[37] The Commission is not aware of any small entities that are re-pricing their brokerage services in a manner that the proposed rule addresses, but assumes that all of these small entities could be affected by the proposed rule.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule would impose no new recordkeeping requirements, and will not materially alter the time required for broker-dealers to comply with the Commission's rules. The proposed rule keeps unnecessary regulatory burdens from being imposed on broker-dealers. Broker-dealers taking advantage of the rule are required to make certain disclosures to customers and potential customers in advertising and contractual materials.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with, the proposed rule.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for such small entities.

The proposed rule is designed to eliminate unnecessary regulatory burdens that otherwise might be imposed on broker-dealers. Small entities, as well as large entities, will benefit from the proposed rule. It is thus inappropriate to exempt small entities from the proposed rule. The provision of the proposed rule requiring certain disclosures to customers and potential customers is designed to prevent investors from being misinformed regarding the nature of the services they are receiving. Consequently, it would be

[33] Investment advisers are required, for example, to deliver an informational brochure to clients and prospective clients, Rule 204–3 [17 CFR 275.204–3], and to make detailed disclosures about the advisory firm and its supervised persons. Rule 206(4)–4 [17 CFR 275.206(4)–4].

[34] 15 U.S.C. 80b–2(a)(11)(F).

[35] 15 U.S.C. 80b–11(a).

[36] 17 CFR 240.0–10(c).

[37] This estimate is based on the information provided in Form X–17A–5 Financial and Operational Combined Uniform Single Reports filed pursuant to section 17 of the Exchange Act and Rule 17a–5 thereunder.

inconsistent with the purposes of the Advisers Act to use performance standards to specify different requirements for small entities.

The Commission believes that the proposed rule will not adversely affect small entities because it does not impose significant, new reporting, recordkeeping, or compliance requirements. Instead, the proposed rule would avoid the imposition of unnecessary regulatory burdens on the provision of brokerage services solely because broker-dealers re-price their full-service brokerage or provide execution-only services in addition to full service brokerage. Therefore, it is not feasible to further clarify, consolidate or simplify the rule's provisions for small entities.

G. Solicitation of Comments

We encourage written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on: (i) The number of small entities that would be affected by the proposed rule; and (ii) whether the impact of the proposed rule on small entities would be economically significant. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact.

VII. Statutory Authority

We are proposing the rule pursuant to our authority under Sections 202(a)(11)(F) and 211(a) under the Act. Section 202(a)(11)(F) gives us authority to except, by rule or order, from the statutory definition of ''investment adviser'' persons not within the intent of that definition.[38] Section 211(a) gives us authority to classify, by rule, persons and matters within our jurisdiction and to prescribe different requirements for different classes of persons, as necessary or appropriate to the exercise of our authority under the Act.

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements.

[38] Because we are using our authority under section 202(a)(11)(F), broker-dealers relying on the rule would not be subject to state adviser statutes. Section 203A(b)(1)(B) of the Act (15 U.S.C. 80b–3A(b)(1)(B)) provides that ''[n]o law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser shall apply to any person * * * that is not registered under [the Advisers Act] because *that person is excepted from the definition of an investment adviser under section 202(a)(11).*'' (emphasis added).

Text of Proposed Rule

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 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The general authority citation for part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.202(a)(11)–1 is added to read as follows:

§ 275.202(a)(11)–1 Certain broker-dealers deemed not to be investment advisers.

A broker or dealer registered with the Commission under Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) (the ''Exchange Act''):

(a) Will not be deemed to be an investment adviser based solely on its receipt of special compensation, provided that:

(1) The broker or dealer does not exercise investment discretion, as that term is defined in Section 3(a)(35) of the Exchange Act (15 U.S.C. 78c(a)(35)), over the accounts from which it receives special compensation;

(2) Any investment advice provided by the broker or dealer with respect to accounts from which it receives special compensation is solely incidental to the brokerage services provided to those accounts; and

(3) Advertisements for, and contracts or agreements governing, accounts for which the broker or dealer receives special compensation include a prominent statement that the accounts are brokerage accounts;

(b) Will not be deemed to have received special compensation solely because the broker or dealer charges a commission, mark-up, mark-down or similar fee for brokerage services that is greater than or less than one it charges another customer; and

(c) Is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject the broker or dealer to the Act.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, *15 U.S.C. 80b–1, et seq.*

4. By amending Instruction 7 in Form ADV Schedule I Instructions (referenced in § 279.1) by adding paragraph (c)(5) to read as follows:

Note: The text of Form ADV does not and the amendment will not appear in the Code of Federal Regulations.

Form ADV

* * * * *

Schedule I Instructions

* * * * *

Instruction 7. *Determining Assets Under Management*

* * * * *

(c) *Continuous and Regular Supervisory or Management Services.*

* * * * *

Accounts that do not receive continuous and regular supervisory or management services:

* * * * *

(5) Brokerage accounts, unless the applicant has discretionary authority.

* * * * *

Dated: November 4, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–29395 Filed 11–9–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Extension of Port Limits of Puget Sound, WA

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the consolidated port of Puget Sound, Washington. This proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before January 10, 2000.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, 1300 Pennsylvania Avenue N.W., Third Floor, Washington, D.C. 20229, on

regular business days between the hours of 9 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Betsy Passuth, Office of Field Operations, 202–927–0795.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the general public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3) by extending the geographical limits of the consolidated port of Puget Sound, Washington.

The geographical limits of the consolidated port of Puget Sound, as set forth in Treasury Decision (T.D.) 96–63, published in the **Federal Register** (61 FR 43428) on August 23, 1996, include Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend and Tacoma. This document proposes to amend the port description of Puget Sound, particularly, to extend and redefine the boundaries of Tacoma as described in the port limit description of the Puget Sound port of entry in T.D. 96–63.

The description of Tacoma within the description of the Puget Sound port is proposed to be extended to include two industrial parks which have new facilities for clearing, storing and forwarding imported merchandise and require the services of Customs personnel. These industrial parks are : Lakewood Industrial Park, 120 acres located in Lakewood, Washington, southeast of the existing port limits; and Sumner Industrial Park, 88 acres located in Sumner, Washington, east of the existing port limits.

Proposed New Puget Sound Port Limits

The geographical area within the boundaries of the consolidated port of Puget Sound is proposed to be as follows:

The ports of Seattle (Section 35, Township 27 North, Range 3 East, West Meridian, County of Snohomish, and the geographical area beginning at the intersection of N.W. 205th Street and the waters of Puget Sound, proceeding in an easterly direction along the King County line to its intersection with 100th Avenue N.E., thence southerly along 100th Avenue N.E. and its continuation to the intersection of 100th Avenue S.E. and S.E. 240th Street, thence westerly along S.E. 240th Street, to its intersection with North Central Avenue, thence southerly along North Central Avenue, its continuation as South Central Avenue and 83rd Avenue South and its connection to Auburn Way North, thence southerly along Auburn Way North and its continuation as Auburn Way South to its intersection with State Highway 18, thence westerly along Highway 18 to its intersection with A Street S.E., then southerly along A Street S.E. to its intersection with the King County Line, then westerly along the King County Line to its intersection with the waters of Puget Sound and then northerly along the shores of Puget Sound to its intersection with N.W. 205th Street, the point of beginning, all within the County of King, State of Washington), Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, and the territory in Tacoma, beginning at the intersection of the westernmost city limits of Steilacoom and The Narrows and proceeding easterly along Main Street to the intersection of Stevens Street, then southerly along Stevens Street to the intersection of Washington Boulevard, then easterly along Washington Boulevard to the intersection of Gravely Lake Drive S.W., then southeasterly to the intersection of Nyanza Road, SW, then southerly to its intersection with Pacific Highway (U.S. Route 99), then proceeding in a northeasterly direction along Pacific Highway to its intersection with 112 Street East and continuing in an easterly direction along 112 Street East to its intersection with the northwest corner of McChord Air Force Base, then proceeding along the northern, then western, then southern boundary of McChord Air Force Base to its intersection, just west of Lake Mondress, with the northern boundary of the Fort Lewis Military Reservation, then proceeding in an easterly direction along the northern boundary of the Fort Lewis Military Reservation to its intersection with Pacific Avenue (SR–7), then proceeding in a southerly direction along Pacific Avenue (SR–7) to its intersection with SR–507, then proceeding in a southeasterly direction along SR–7 to its intersection with 224th Street East, then proceeding in an easterly direction along 224th Street East to its intersection with Meridian Street South (SR–161), then proceeding in a northerly direction along Meridian Street South (SR–161) to the intersection with 176 Street East, then easterly along 176 Street East extended to the intersection with Sunrise Parkway East, then northwesterly along Sunrise Parkway East to the intersection with 122nd Avenue East, then northerly to the intersection with Old Military Road East, then northeasterly to the intersection with SR–162, then northerly along SR–162 to the intersection with SR–410, then easterly along SR–410 to the intersection with 166th Avenue East, then northerly to the intersection with Sumner-Tapps Highway, continuing northeasterly along Sumner-Tapps Highway to 16th Street East, then easterly to 182 Avenue East, then northerly to the northern boundary of Pierce County, then proceeding in a westerly direction along the northern boundary of Pierce County to its intersection with Puget Sound, then proceeding in a generally southwesterly direction along the banks of the East Passage of Puget Sound, Commencement Bay, and The Narrows to the point of intersection with the westernmost city limits of Steilacoom, Washington, including all points and places on the southern boundary of the Juan de Fuca Strait from the eastern port limits of Neah Bay to the western port limits of Port Townsend, all points and places on the western boundary of Puget Sound, including Hood Canal, from the port limits of Port Townsend to the northern port limits of Olympia, all points and places on the southern boundary of Puget Sound from the port limits of Olympia to the western port limits of Tacoma, and all points and places on the eastern boundary of Puget Sound and contiguous waters from the port limits of Tacoma north to the southern port limits of Bellingham, all in the State of Washington.

Comments

Prior to the adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations Branch, Office of Regulations and Rulings, 1300 Pennsylvania Avenue N.W., Third Floor, Washington, D.C. 20229.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

Regulatory Flexibility Act and Executive Order 12866

Customs establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the

country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are not subject to Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Raymond W. Kelly,

Commissioner of Customs.

Approved: October 1, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–29379 Filed 11–9–99; 8:45 am]

BILLING CODE 4820–02–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 504

RIN 3141–AA04

Classification of Games

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (Commission) proposes regulations which will establish a formal process for the classification of games played on Indian lands under the Indian Gaming Regulatory Act (Act). These regulations would require that the Commission decide that a game is a Class II game before it authorizes the play of such game in a Class II gaming operation. It also allows for a transition period to implement this process.

DATES: Comments may be submitted on or before January 10, 2000.

ADDRESSES: Comments may be mailed to: Game Classification Comments, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9 a.m. and noon, and between 2 p.m. and 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Penny J. Coleman at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA, or the Act), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Under the Act, the Commission is charged with regulating class II gaming and certain aspects of class III gaming on Indian lands. The regulations proposed today would establish a formal, administrative process for deciding whether a game is a Class II or III game and allow the Commission to discontinue the current advisory classification opinion process.

Regulatory Flexibility Act

This proposed 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.* Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

The Commission is in the process of obtaining clearance from the Office of Management and Budget (OMB) for the information collection requirements contained in this proposed rule, as required by 44 U.S.C. 3501 *et seq.* The information required to be submitted is identified in sections 504.6, 504.7 and 504.8. The information will be used to determine whether a game can be classified as a Class II or III game or a nongambling game and whether the continued play of the games remains consistent with the classification decisions issued by the Commission.

The public reporting burden for this collection of information is estimated to average 10 hours per game classification request, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission estimates that, during the first two years of the implementation of this regulatory process, approximately 50 requests for classification decisions will be filed each year, for an annual burden of 500 hours. After the first two years, the Commission estimates that approximately 20 requests for classification decisions will be filed each year, for an annual burden of 200 hours.

Send comments regarding this collection of information, including suggestions for reducing the burden to both, Penny Coleman, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, DC 20005; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

The Commission solicits public comment as to:

a. Whether the collection of information is necessary for the proper performance of the functions of the Commission, and whether the information will have practical utility;

b. The accuracy of the Commission's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

An agency may not conduct, and a person is not required to, respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 504

Gambling, Indians-lands, Reporting and recordkeeping requirement.

For the reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR by adding a new Part 504 as follows:

PART 504—CLASSIFICATION OF GAMES

Sec.

Authority: 25 U.S.C. 2701–2721.

§ 504.1 What does this part cover?

This part establishes the process for determining whether a game played under the Indian Gaming Regulatory Act constitutes a Class II or III game as defined in part 502 of this chapter. It is intended to identify which games are class II and therefore subject to tribal and Commission jurisdiction and to assure that gaming operations do not play Class III games except under a tribal-state compact or Class III gaming procedures issued by the Secretary of the Interior.

§ 504.2 What is a classification decision and who may apply for it?

A classification decision is a determination that a game falls within Class II or III or is a game that is not subject to the Indian Gaming Regulatory Act. Tribes or their designated representatives may apply for a classification decision. Persons who own or provide individual games to tribes may also apply for a classification decision so long as the persons are sponsored by a tribe.

§ 504.3 Why must a tribe apply for or sponsor the application for a classification decision?

Tribes shall not offer games on Indian lands without a classification decision which concludes that the game is a Class II game unless the game is offered pursuant to a tribal-state compact or Class III gaming procedures issued by the Secretary of the Interior. Tribes are subject to enforcement action by the Chairman if they offer games as Class II without a classification decision.

§ 504.4 Can a tribe rely on a classification decision issued to another?

Classification decisions which are issued to a tribe or person but applicable to others can be relied on by other tribes unless:

(a) The games are not exactly the same;

(b) It is a card game in a state different from where the applying or sponsoring tribe is located; or

(c) The game otherwise violates federal law.

§ 504.5 When must a tribe apply for or sponsor the application for a classification decision?

A tribe shall apply for a classification decision:

(a) If a tribe wishes to continue playing a Class II game it was playing as of [the effective date of the final rule], or

(b) When a tribe wants to introduce a new game into its Class II gaming operation.

§ 504.6 Will a tribe be required to discontinue all of its existing games which are not subject to a tribal-state compact or Class III gaming procedures issued by the Secretary of the Interior until the Chairman issues a classification decision?

A tribe will be required to discontinue existing games if:

(a) It fails to submit a completed application for a classification decision within six months of [the effective date of the final rule], and it fails to pursue diligently a decision by providing all required information, or

(b) The tribe is otherwise notified that the game is not a class II game.

§ 504.7 How does a tribe or person apply for a classification decision?

(a) A tribe must submit the following to the Chairman:

(1) A designation of an agent who is authorized to provide additional information if required;

(2) A request for a classification decision;

(3) A designation of whether and where the game is already in play;

(4) A complete description of the game including the operational characteristics and rules of the game;

(5) A complete description of the method used for betting, paying winners, paying the house, banking or nonbanking of the game and funding jackpots;

(6) A separate description of the game and method used for betting, paying winners, paying the house, banking or nonbanking of the game and funding jackpots, which description shall be provided to persons or entities seeking to comment on the classification of the game;

(7) Copy of any sales or promotional literature,

(8) For games that use machines;

(i) (For games already in play) a complete list of the serial numbers or other identifiers of each machine;

(ii) A videotape depicting the play of the entire game;

(iii) A report of laboratory test(s) which were conducted to support the application; and

(iv) An example of each of the memory storage chips (EPROM) or devices used to control the game play in the machine and a paper print out of the code contained in each chip or device with sufficient programmer's notes to facilitate rapid analysis of the code; and

(9) For card games, a statement with supporting materials explaining how the game meets the standard described in 25 CFR 502.3(c).

(b) In addition to the information contained in paragraph (a) of this section, a person applying for a classification decision shall submit a letter, signed by an authorized tribal official, indicating that the tribe sponsors the person's application.

§ 504.8 Will any additional information be required?

Upon request, the tribe or person may be required to provide:

(a) A live demonstration of the game;

(b) A prototype of any games which use machines; and

(c) Any further information or clarification the Chairman determines he requires.

§ 504.9 Are there any additional requirements for games which employ machines?

After a game has been classified, a tribe shall provide a serial number and description of each machine which is in use and shall certify that each such machine is identical in every respect to the game which was classified by the Chairman.

§ 504.10 Will games be field tested?

(a) A preliminary, nonbinding classification decision may be made to allow for a field test. If such nonbinding decision is made, a tribe may be permitted to operate one or more of the games at a licensed gaming operation for no more than 180 days under such terms and conditions as the Chairman may approve or require.

(b) The Chairman may order a termination of the test period, if he determines, in his sole and absolute discretion, that applicant tribe or person, the manufacturer or developer of the game or the licensed gaming operation has not complied with the terms and conditions of the testing period or if he determines that the game is not Class II.

§ 504.11 What is required of a tribe or person who merely seeks a modification of a game which is already the subject of a classification decision?

A tribe or person shall submit a request for a classification decision on the game which is subject to the modifications by providing a detailed description of the modification and how the modification affects the game. A person shall also submit a letter, signed by an authorized tribal official, indicating that the tribe sponsors the person's application for a modification.

§ 504.12 Must a tribe or person seek a classification decision on a game which it alleges is a game of skill?

A tribe or person shall follow the same process for receiving a classification decision as is used for other games in this part.

§ 504.13 Is there an opportunity for public comment on a request for a gaming classification before a decision is made by the Chairman?

The Commission will include on its Internet site and its telephonic fax-on-demand documents a listing of games for which it is considering a classification. Games will appear on this listing for thirty (30) days whenever practicable. Any individual may request a description of a particular game from the Commission during this period and offer written comment which will then be considered by the Chairman before a classification decision is reached on that particular game.

§ 504.14 How does a tribe or person appeal a classification decision with which it does not agree?

(a) Within 30 days of service of a classification decision, a tribe or person sponsored by a tribe may appeal a classification decision under this part by filing:

(1) A notice of appeal with the Commission; and

(2) A statement and any supporting materials specifying why the appellant believes the classification decision to be erroneous.

(b) Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(c) Within 60 days of receipt of the appeal when practicable, the Commission shall review the file used to make the initial classification decision and any material submitted in the appeal and issue a decision.

§ 504.15 Will the tribe or person have an opportunity to demonstrate its game to the Commission?

In addition to any demonstration requested during the initial classification decision process, the Commission may request a demonstration of the game during its review of the record on appeal.

[FR Doc. 99–29103 Filed 11–9–99; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106527–98]

RIN 1545–AW22

Capital Gains, Partnership, Subchapter S and Trust Provisions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 1(h) relating to sales or exchanges of interests in partnerships, S corporations, and trusts.

DATES: The public hearing originally scheduled for Thursday, November 18, 1999, at 1 p.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, August 9, 1999, (64 FR 43117), announced that a public hearing was scheduled for Thursday, November 18, 1999, at 1 p.m., in room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1(h) of the Internal Revenue Code. The public comment period for these proposed regulations expires on Monday, November 8, 1999. The outlines of topics to be addressed at the hearing were due on Thursday, October 28, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, November 2, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Thursday, November 18, 1999, is cancelled.

Cynthia Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–29360 Filed 11–9–99; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Mine Safety and Health Review Commission proposes to amend its procedural rules by adding a new rule setting forth settlement procedures which are intended to facilitate and promote the pre-hearing settlement of contested cases that come before the Commission. The new procedures would be instituted as a pilot program for a two-year trial period.

DATES: Comments must be received by December 10, 1999.

ADDRESSES: All comments concerning these proposed rules should be addressed to Norman M. Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006. For the convenience of persons who will be reviewing the comments, it is requested that commenters provide an original and three copies of their comments.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, 202–653–5610 (202–653–2673 for TDD relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's Procedural Rules, 29 CFR Part 2700, are currently silent regarding procedures to be utilized by administrative law judges (''ALJs'') to facilitate the settlement of contested cases. The procedures used in a given case to foster pre-hearing settlement of

disputes have been determined informally by the individual ALJ assigned to the case. Notwithstanding the use of informal settlement techniques, some cases continue to the hearing stage even though settlement may be achievable.

The proposed rule is intended to provide a structured and formal system which will enhance the possibility of settlement by having the parties meet and confer, at a preliminary stage in the proceedings, with a judge who has full authority both to guide and assist the parties to a complete or partial resolution of the case and to assure the parties the confidentiality which is a necessary component of any successful settlement procedure. The Commission anticipates that providing the parties with this alternative method of resolving their disputes will reduce the number of cases that go to hearing. In conjunction with the adoption of this rule, the Commission intends to give ALJs specialized training in dispute resolution techniques.

The proposed rule is consonant with the goals set by Congress in the Alternative Dispute Resolution Act of 1996, 5 U.S.C. 571 *et seq.* (''ADRA''). In the ADRA, Congress found that, while administrative proceedings were intended to provide a prompt and inexpensive means of resolving disputes, they ''have become increasingly formal, costly, and lengthy, resulting in unnecessary expenditures of time and in a decreased likelihood of achieving consensual resolution of disputes.'' 5 U.S.C. 571 note. In response to this development, Congress directed each federal agency to ''examine alternative means of resolving disputes in connection with * * * formal and informal adjudications.* * *'' *Id.*

The proposed settlement provision is set forth here as a new § 2700.85. The Commission intends to implement the rule for a two-year trial period. Settlement proceedings commenced pursuant to § 2700.85 shall continue to be processed in accordance with this rule even if it expires prior to the completion of such proceedings.

II. Analysis of the Regulation

In § 2700.85(a), the Commission states that its policy is to permit and encourage settlements at any stage of proceedings. Section 2700.85(b) would make the settlement procedure applicable to all proceedings except disciplinary proceedings under current § 2700.80. Definitions of the terms ''Settlement Judge,'' ''settlement proceeding'' and ''partial settlement'' are proposed in § 2700.85(c).

Under proposed § 2700.85(d)(1), the Settlement Judge may be appointed by the Chief ALJ on his own motion or on the motion of a party. Paragraph (d)(2) specifies that the Settlement Judge cannot be the ALJ ultimately assigned to hear and decide the case.

Section 2700.85(e) establishes a 30-day time limit for settlement negotiations, with an extension not to exceed 20 days upon application to and approval by the Chief ALJ. A further extension could only be approved by the Chief ALJ in extraordinary circumstances.

The powers and duties of Settlement Judges are set forth in § 2700.85(f). Of particular note is the Settlement Judge's authority to confer separately with any party or representative. Currently, due to restrictions on ex parte communications contained in § 2700.82, Commission ALJs may not utilize this basic tool of mediation.

Under proposed § 2700.85(g)(1), it is presumed that settlement conferences will take place by conference telephone call. However, face-to-face conferences are also contemplated under one or more of four enumerated circumstances set forth in paragraph (g)(2). Under paragraph (g)(3), conferences involving travel by the Settlement Judge require approval by the Chief ALJ. Paragraph (g)(4) permits the Settlement Judge to recommend attendance at the settlement conference of representatives expected to try the case, parties, or other agents having full settlement authority.

In order to encourage the parties to engage in frank and meaningful settlement negotiations, the Commission proposes a broad grant of confidentiality in § 2700.85(h). Paragraph (h)(1) protects from subsequent disclosure evidence of conduct or statements and documents revealed during settlement negotiations, except with consent of the parties. Further, this paragraph prohibits the Settlement Judge from divulging statements or information presented during private discussions except with consent of the party to such discussions. The confidentiality provision also specifies that evidence of conduct or statements made in settlement negotiations, notes prepared or maintained by the Settlement Judge, and communications between the Settlement Judge and the Chief ALJ are not admissible in any subsequent hearing or other proceeding except by stipulation of the parties. In addition, paragraph (h)(1) precludes the Settlement Judge from discussing the merits of the case with someone who is not a party or representative, and from being called as a witness.

While seeking to protect the confidentiality of settlement negotiations in order to enhance their effectiveness, the Commission is also cognizant of the need to prevent parties from attempting to use the settlement procedure as a means to shield otherwise discoverable or admissible evidence. Accordingly, in paragraph (h)(2), the Commission proposes language that permits the use in litigation of documents disclosed in the settlement process so long as they are obtained through appropriate discovery or subpoena. Paragraph (h)(2) clarifies that discovery or admission of evidence is not barred solely by virtue of its presentation in the course of a settlement proceeding. This paragraph also permits disclosure of information necessary to document a full or partial settlement agreement.

Consistent with the broad confidentiality and nondisclosure provisions, § 2700.85(i) provides that no material protected from disclosure, and no material in the possession of the Settlement Judge related to the settlement proceeding, will be entered in the official case file, and that such material therefore will not be available for public inspection. The only exception to this requirement is that decisions approving full or partial settlements, notices of termination of settlement proceedings, and stipulations of law or fact resulting from settlement negotiations will be part of the official case record.

In § 2700.85(j), the Commission would require the Settlement Judge to approve or deny in writing full or partial settlements. This requirement is consistent with that applicable to ALJs under present § 2700.69.

Under proposed § 2700.85(k), settlement proceedings terminate upon the Settlement Judge's issuance of a decision approving a full settlement, or by written notification to the Chief ALJ that no full settlement was reached. Paragraph (k)(2) provides that the Chief ALJ, upon notification that a full settlement was not obtained, must promptly assign the case to an administrative law judge other than the Settlement Judge for further proceedings.

Decisions concerning submission of a case to settlement procedures, assignment of a Settlement Judge, requests for enlargement of time for negotiations, and termination of settlement proceedings are not subject to rehearing or appellate review under proposed § 2700.85(l).

Consistent with the Commission's desire to enable Settlement Judges to employ the traditional techniques of

mediation, and with proposed §§ 2700.49(f)(4) and (f)(5), the Commission proposes in § 2700.85(m) to exclude settlement procedures under the proposed rule from application of current § 2700.82, governing ex parte communications, to permit Settlement Judges to privately confer with a party or its representative during settlement proceedings.

III. Matters of Regulatory Procedure

The Commission has determined that these rules are not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–612) that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Ex parte communications, Hearing and appeal procedures, Lawyers.

For the reasons set out in the preamble, it is proposed to amend 29 CFR part 2700 as follows:

PART 2700—PROCEDURAL RULES

1. The authority citation for part 2700 is revised to read as follows:

Authority: 5 U.S.C. 571 note, 572 and 574; 30 U.S.C. 815, 820 and 823.

2. Part 2700 is amended by adding a new § 2700.85, to read as follows:

§ 2700.85 Settlement procedures.

(a) *Policy.* The Commission permits and encourages settlements of disputes at any stage of proceedings.

(b) *Applicability.* This section applies to any proceeding under these rules except disciplinary proceedings under § 2700.80.

(c) *Definitions.* For purposes of this section:

(1) *Settlement Judge* means the Judge (including, where applicable, the Chief Administrative Law Judge) appointed by the Chief Judge to conduct settlement negotiations under this section.

(2) *Settlement proceeding* means any proceeding under this section.

(3) *Partial settlement* means the complete disposition of some but not all of the issues in the case.

(d) *Appointment.* (1) The Chief Judge may, on the motion of any party or on his own initiative, appoint himself or another Commission administrative law judge as Settlement Judge in any proceeding covered by this section.

(2) The Settlement Judge shall not be the Judge assigned to hear and decide the case.

(e) *Time period for negotiations.* Settlement negotiations under this section shall be for a period not to exceed 30 days. Upon request of the Settlement Judge and submission by the Settlement Judge to the Chief Judge of an oral or written status report, the Chief Judge may grant an enlargement of time of the settlement period not exceeding 20 days. The Chief Judge may grant a further enlargement of time only in extraordinary circumstances.

(f) *Powers and duties of Settlement Judges.* (1) The Settlement Judge shall confer with the parties on any subjects with a view toward full or partial settlement of the case.

(2) The Settlement Judge shall seek resolution of as many of the issues in the case as is feasible.

(3) The Settlement Judge may suspend discovery and rule on motions related to discovery during the time of assignment.

(4) The Settlement Judge may confer separately with any party or representative.

(5) The Settlement Judge may suggest privately to each party or its representative what concessions should be considered, and assess privately with each party or representative the reasonableness of the party's case or settlement position.

(g) *Settlement conference and other communication.* (1) In general it is expected that the Settlement Judge shall communicate with the parties by a conference telephone call.

(2) A personal conference with the parties may be scheduled under one or more of the following circumstances:

(i) It is possible for the Settlement Judge to schedule in one day three or more cases for conference at or near the same location;

(ii) The offices of the representatives of the parties, as well as that of the Settlement Judge, are located in the same metropolitan area;

(iii) A conference may be scheduled in a place and on a day that the Judge is scheduled to preside in other proceedings under this part;

(iv) Any other suitable circumstances in which the Settlement Judge determines that a personal meeting is necessary for a resolution of substantial issues in a case and the holding of a conference represents the prudent use of resources.

(3) All personal conferences under § 2700.85(g)(2) that require travel by the Settlement Judge must be approved by the Chief Judge.

(4) The Settlement Judge may recommend that the representative who is expected to try the case for each party be present and, without regard to the scope of the representative's powers, may also recommend that the parties, or agents having full settlement authority, be present. The parties and their representatives are required to be completely candid with the Settlement Judge so that he may properly guide settlement discussions.

(h) *Confidentiality.* (1) All statements made, and all information presented, during the course of proceedings under this section shall be regarded as confidential and shall not be divulged outside of these proceedings except with the consent of the parties. The Settlement Judge shall not divulge any statements or information presented during private negotiations with a party or his representative except with the consent of that party. No evidence of statements or conduct in proceedings under this section relating to compromise or offers to compromise, no notes or other material prepared by or maintained by the Settlement Judge, and no communications between the Settlement Judge and the Chief Judge, including any status report of the Settlement Judge under paragraph (e) of this section, will be admissible in any subsequent hearing or other proceeding except by stipulation of the parties. The Settlement Judge shall not discuss the merits of the case with any person except a party or its representative, nor appear as a witness in any hearing of the case.

(2) Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena. Nothing in paragraph (h)(1) of this section prevents the discovery or admissibility of any evidence that is otherwise discoverable or admissible solely because the evidence was presented in the course of a settlement proceeding, or precludes disclosure of information necessary to document an agreement reached or order issued pursuant to a settlement proceeding.

(i) *Record of proceedings.* (1) No material of any kind required to be held confidential under paragraph (h)(1) of this section shall be part of the official case record, nor shall any such material be open to public inspection, unless the

parties otherwise stipulate and the Settlement Judge approves.

(2) The Settlement Judge shall file or cause to be filed in the official case record any decision approving full settlement of the case. Where a full settlement is not achieved, the Settlement Judge shall notify the Chief Judge in writing of the termination of proceedings under this section, have the notification filed in the official case record, and include with the notification, for filing in the official case record, any decision approving partial settlement or stipulation of law or fact resulting from settlement negotiations.

(3) With the exception of a decision approving the terms of any full or partial settlement agreed to between the parties as set forth in paragraph (j) of this section, notification of the termination of settlement proceedings, or stipulations of law or fact agreed to by the parties, the Settlement Judge shall not file or cause to be filed in the official case record any material in his possession relating to these proceedings, including but not limited to communications with the Chief Judge, unless the parties otherwise stipulate and the Settlement Judge approves.

(j) *Settlement.* Pursuant to the Mine Act, any full or partial settlement of a case that is the subject of a settlement proceeding shall be submitted to the Settlement Judge for written approval.

(k) *Termination of settlement proceeding.* (1) The settlement proceedings shall terminate upon the issuance of a decision approving a full settlement or written notification to the Chief Judge by the Settlement Judge that no full settlement has been reached.

(2) Upon notification to the Chief Judge by the Settlement Judge that negotiations have concluded without a full settlement, the Chief Judge shall promptly assign the case to a Judge other than the Settlement Judge for appropriate proceedings under the Commission's procedural rules.

(l) *Non-reviewability.* Notwithstanding the provisions of § 2700.76 governing interlocutory review, any decision concerning the submission of a case to settlement procedures, any decision concerning the assignment of a Settlement Judge or a particular Judge, any decision to request or grant an enlargement of time under paragraph (e) of this section, and any decision by the Settlement Judge to terminate proceedings under this section is not subject to review by, appeal to, or rehearing by any Judge, the Chief Judge, or the Commission.

(m) *Ex-parte communications.* The provisions of § 2700.82 shall not apply to settlement proceedings under this section.

Dated: November 2, 1999.

Mary Lu Jordan,

Chairman.

[FR Doc. 99–29322 Filed 11–9–99; 8:45 am]

BILLING CODE 6735–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–087–1–9939b; FRL–6463–5]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of North Carolina on July 29, 1998. These revisions clarify rules for the control of particulate emissions, change the Division's name and address, revise exclusionary levels, add requirements for expedited permit processing, make clarifications, and correct deficiencies identified by EPA. In the Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal 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 action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on 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: Written comments must be received on or before December 10, 1999.

ADDRESSES: All comments should be addressed to: Gregory Crawford at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

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 30303–8960.

North Carolina Department of Environment and Natural Resources, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at 404/562–9046.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: October 5, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–27932 Filed 11–9–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2272; MM Docket No. 99–313; RM–9753]

Radio Broadcasting Services; Greenwood and Mauldin, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sutton Radiocasting Corporation proposing the reallotment of Channel 244A from Greenwood to Mauldin, South Carolina, and the modification of Station WCRS–FM's license accordingly. Channel 244A can be reallotted to Mauldin in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.7 kilometers (6.7 miles) south at petitioner's requested site. The coordinates for Channel 244A at Mauldin are 34–41–30 North Latitude and 82–17–02 West Longitude. In accordance with provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 244A at Mauldin, South Carolina.

DATES: Comments must be filed on or before December 13, 1999, reply comments on or before December 28, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: Robert Lewis Thompson, Esq., Taylor, Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–313, adopted October 13, 1999, and released October 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–29434 Filed 11–9–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 217
Wednesday, November 10, 1999

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

Agricultural Marketing Service

[Docket No. FV99–917–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of revision and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision to the currently approved information collection for Peaches Grown in California, Marketing Order No. 917 and Winter Pears Grown in Oregon and Washington, Marketing Order No. 927.

DATES: Comments on this notice must be received by January 10, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Tershirra T. Yeager, Marketing Assistant, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Post Office Box 96456, Room 2525–S, Washington, DC 20090–6456, Telephone: (202) 720–2491, Fax: (202) 720–5698; or E-mail: moabdocket__clerk@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Peaches Grown in California, Marketing Order No. 917; OMB number 0581–0080; Winter Pears Grown in Oregon and Washington, Marketing Order No. 927; OMB number 0581–0089.

Expiration Date of Approval: 0581–0080 expires on May 31, 2000 and 0581–0089 expires on July 31, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

California Peaches

The California peach marketing order program, which has been operating since 1939, authorizes the issuance of grade, size, and maturity regulations, inspection requirements, and marketing and production research including paid advertising. Regulatory provisions apply to peaches shipped within and out of the area of production to any market, except those specifically exempted by the marketing order.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the California peach marketing order program.

The order, and rules and regulations issued thereunder, authorize the Peach Commodity Committee (Committee), the agency responsible for local administration of the order, to require handlers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms, as a convenience to persons who are required to file information with the Committee relating to peach production and supplies, shipments, inventories, and other information needed to effectively carry out the purposes of the AMAA and the order. A USDA form is used to allow growers to vote on amendments or continuance of the marketing order. In addition, peach growers and handlers who are nominated by their peers to serve as representatives on the Committee must file nomination forms with the Secretary.

These forms require a minimum of information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.726 hours per response.

Respondents: California peach producers and for-profit businesses handling fresh peaches produced in California.

Estimated Number of Respondents: 721.

Estimated Number of Responses per Respondent: 1.957.

Estimated Total Annual Burden on Respondents: 1,411 hours.

Winter Pears

The winter pear marketing order authorizes the issuance of grade, size, quality, inspection, and reporting requirements for any variety of winter pear. Currently grade, size, quality, and inspection requirements are not being used. The marketing order also provides authority to fund projects involving production research, marketing research and development, and marketing promotion, including paid advertising. The order, and rules and regulations issued thereunder, authorize the Winter Pear Control Committee (WPCC), which is responsible for locally administering the program, to require handlers and growers to submit certain information. Much of the information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The WPCC has developed forms as a convenience to persons who are required to file information with the WPCC relating to winter pear production and supplies, shipments, inventories, and other information needed to effectively carry out the purposes of the AMAA and the order. A USDA form is used to allow growers to

vote on amendments or continuance of the marketing order. In addition, winter pear growers and handlers who are nominated by their peers to serve as representatives on the WPCC must file nomination forms with the Secretary.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarter's staff, and authorized employees of the WPCC. Authorized WPCC employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.764 hours per response.

Respondents: Winter pear producers and for-profit businesses handling fresh winter pears produced in Oregon and Washington.

Estimated Number of Respondents: 1,890.

Estimated Number of Responses per Respondent: 1.8873

Estimated Total Annual Burden on Respondents: 3,567 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0080 and California Peach Marketing Order No. 917; and OMB No. 0581–0089 and the Winter Pear Marketing Order No. 927, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Post Office Box 96456, Room 2525–S, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket__clerk@usda.gov. All comments received will be available for public inspection during regular business hours at the same address.

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: November 4, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–29488 Filed 11–9–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land and Resource Management Plan for the Bighorn National Forest located in Sheridan, Johnson, Big Horn, and Washakie Counties, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement in conjunction with revision of the Land and Resource Management Plan for the Bighorn National Forest.

SUMMARY: The Forest Service will prepare an environmental impact statement in conjunction with the revision of its Land and Resource Management Plan (hereafter referred to as Forest Plan or Plan) for the Bighorn National Forest.

This notice describes the proposed action, specific portions of the current Forest Plan to be revised, environmental issues considered in the revision, estimated dates for filing the environmental impact statement, information concerning public participation, and the names and addresses of the agency officials who can provide additional information.

DATES: The public is asked to provide comments identifying and considering issues, concerns, and the scope of analysis with regard to the proposed action, in writing by January 31, 2000. The Forest Service expects to file a Draft Environmental Impact Statement with the Environmental Protection Agency (EPA) and make it available for public comment in February of 2001. The Forest Service expects to file a Final Environmental Impact Statement in February of 2002.

ADDRESSES: Send written comments to: Abigail R. Kimbell, Forest Supervisor, Bighorn National Forest, 1969 South Sheridan Avenue, Sheridan, Wyoming 82801.

FOR FURTHER INFORMATION CONTACT: Bob Daniels, Forest Planner, (307 672–0751) or Joel Strong, Alternate Planning Team Leader (307 672–0751).

RESPONSIBLE OFFICIAL: Rocky Mountain Regional Forester at P.O. Box 25127, Lakewood, CO 80225–0127.

SUPPLEMENTARY INFORMATION: Pursuant to Part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Forester for the Rocky Mountain Region gives notice of the agency's intent to prepare an environmental impact statement for the revision of the Land and Resource Management Plan (hereafter referred to as Forest Plan or Plan) for the Bighorn National Forest. According to 36 CFR 219.10(g), land and resource management plans are ordinarily revised on a 10 to 15 year cycle. The existing Forest Plan was approved on October 4, 1985.

The United States has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders and Court decisions. The Forest Service will establish regular and meaningful consultation and collaboration with the tribal nations on a government to government basis.

Forest plans describe the intended management of National Forests. Agency decisions in these plans do the following:

1. Establish multiple-use goals and objectives (36 CFR 219.11(b)).
2. Establish forestwide management standards and guidelines applying to future activities (resource integration requirements, 36 CFR 219.13 to 219.27).
3. Establish management areas and management area direction (management area prescriptions) applying to future activities in that management area (resource integration and minimum specific management requirements) 36 CFR 219.11(c).
4. Establish monitoring and evaluation requirements (36 CFR 219.11(d)).
5. Determine suitability and potential capability of lands for resource production. This includes designation of suitable timber land and establishment of allowable timber sale quantity (36 CFR 219.14 through 219.26).
6. Where applicable, recommend designations of special areas such as Wilderness (36 CFR 219.17) and Wild and Scenic Rivers (The Wild and Scenic Ribers Act) to Congress.

Need for Change In The Current Forest Plan

Since our existing Forest Plan was approved in 1985, experience in implementing the plan and monitoring the effects of that implementation indicates that we need to make some changes in management direction.

Several other sources have also highlighted the need for changes in the current Forest Plan. These sources include:

- Public involvement which has identified new information, issues and public values.
- Monitoring and scientific research which have identified new information and knowledge gained.
- Forest plan implementation which has identified management concerns, particularly, the inability of current standards and guidelines to be met while providing projected outputs of forest products in our existing plan.
- New Management Area (MA) Prescriptions have been developed since the 1985 Plan was approved. These need to be adapted with goals and objectives clearly defined. Management Area boundaries need to be evaluated and mapped.

Preparing the Plan and EIS

An interdisciplinary team is conducting the environmental analysis and will prepare an environmental impact statement associated with revision of the Forest Plan. This interdisciplinary team will also prepare the revised Forest Plan. As part of this effort, the interdisciplinary team will develop a list of forestwide standards and guidelines; identify draft management areas; and develop the corresponding management area themes, settings, desired condition statements, and management area-specific standards and guidelines. These will then be used to develop alternatives to the proposed action for the revised Forest Plan.

The Proposed Action

Major Revision Topics

We have identified the following five major revision topics through annual Forest Plan monitoring reports, review of regulations, internal Forest Service discussions, and discussions with the public:

- Biological Diversity
- Timber Suitability and Management of Forested Lands
- Roadless Area Allocation and Management
- Special Areas
- Travel Dispersed and Recreation Management

The topics represent areas where we identified a significant need for change (discussed above) or where regulations require analysis. There will also be secondary revision topics that are also important issues, however they are not likely substantial or widespread enough to be major drivers in the alternative themes. Management of riparian lands on the Forest, elk security, and designation of areas appropriate for utility lines and hydro electric power production are examples of other issues that will be addressed.

The Forest Service has recently adopted a new resource agenda. This new approach, A Natural Resource Agenda for the 21st Century, will be the foundation for National Forest Management into the 21st century.

There are four key elements in the agenda:

(1) Watershed health and restoration
(2) Sustainable forest ecosystem management
(3) Forest Roads
(4) Recreation

Another important development was passage of the Government Performance and Results Act (GPRA) which was passed in 1993. This act directs the preparation of periodic strategic plans by federal agencies. The First Strategic Plan for the Forest Service written in 1997, focuses on three goals:

(1) Ensure Sustainable Ecosystems
(2) Provide Multiple Benefits for People Within the Capabilities of Ecosystems
(3) Ensure Organizational Effectiveness

The revised Land and Resource Management Plan for the Bighorn National Forest will be built on principles of integrated ecosystem management. This appraoch will address many of the concerns and monitoring recommendations identified with the 1985 Plan.

Watershed health, and restoration will be important components of the analysis and Plan. Sustainable forest ecosystems and forest roads will also be important considerations as the Plan is revised. Finally, recreation will be featured in the special area and travel management revision topics.

The Revised Forest Plan will include a monitoring strategy to measure how effectively the Plan meets stated goals and objectives. In keeping with GPRA and the Natural Resource Agenda, this strategy will focus on outcomes and desired resource conditions rather than outputs.

As part of the proposed action, the following changes are suggested for each of the revision topics:

Biological Diversity

Current Direction: In the current Plan is intended to produce a diversity of habitats well-distributed throughout the landscape. This approach to managing biological diversity produces a very heterogenous landscape at a fine scale. Patches are small, with a high percentage of edge habitat. Patches are areas where the vegetation is similar in species, age, and size. Natural disturbance processes are generally controlled or suppressed. All habitats, including late successional forests are well distributed but in generally small patches. The current plan contains two Research Natural Area which feaure biological diversity related features.

Need for Revision: The following concerns with biological diversity have been identified from monitoring and public scoping and indicate a need for change.

- Public interest in biological diversity and how best to maintain it has grown substantially since the Forest Plan was approved over a decade ago.
- Biological diversity or various aspects of it (such as threatened, endangered, and sensitive species management and forest health) have been significant issues in environmental analyses in recent years. The current plan's emphasis on heterogeneous habitats and exclusion of natural disturbance events has caused concerns about sustainability of the forested ecosystems.
- Direction in the current plan does not fully reflect the latest scientific information on land management planning. This new information needs to be incorporated into the revised plan, particularly the principles of ecosystem management, with attention given to managing on more of a landscape scale.

Proposed Action: The proposed action is based on monitoring, preliminary analysis, and public input and includes the following actions which will be disclosed in one or more of the draft EIS alternatives:

- Allocating larger blocks of roadless areas to prescriptions with an emphasis on late successional forests and natural disturbance processes.
- Emulating natural landscape patch size in many areas where timber harvest is allowed.
- Increased use of prescribed fire both within and outside of Wilderness through natural and human ignitions.
- Aggressive treatment of noxious weed populations through various means, including mechanical, biological and chemical control.
- Exclude or modify some existing uses to better protect species at risk and to maintain or improve species viability and biological diversity.

Timber Suitability and Management of Forested Lands

Current Direction: Currently the Forest Plan allocates approximately 92% of the tentatively suited lands in management area prescriptions to timber management. Timber

management is practiced across these management areas, with differing management emphases and intentions. The current Plan originally set the allowable sale quantity (ASQ) for the Bighorn National Forest at 149 million board feet per decade (14.9 million board feet per year). Actual volume sold has fallen well short of the projected levels. Since 1995 the amount of green sawtimber that can be offered for sale has been administratively ''capped'' at 4.8 million board feet annually until the Forest Plan is revised. Less than 20% of the suited lands are outside of inventoried roadless areas.

Need for Revision: The following indicate a need for change in the management of forested lands:

- Projected harvest levels in the current plan are not being achieved.
- Current projected harvest levels and certain prescribed standards and guidelines, particularly associated with visuals and wildlife are not compatible.
- Reevaluaton of the tentatively suited lands is required at 10 years (36 CFR 219.12(k)(5)(ii)).
- Allocation of existing roadless areas to timber management prescriptions continues to be very controversial.
- Silvicultural prescriptions specified in various management areas are often in conflict with other multiple use objectives.
- Current forest conditions indicate treatments for products other than sawlogs are needed.

Proposed Action: The following actions will be proposed in one or more of the EIS alternatives.

- The Forest land base will be classified into various categories of suitability for timber production within each alternative.
- The allowable sale quantity and long-term sustained yield capacity will be identified for each Plan alternative. Recent analysis indicates that the current ASQ cannot be sustained.
- New and revised goals, objectives, standards, and guidelines will be proposed for harvest prescriptions and logging systems.
- Recommended and allowable timber prescriptions will be adjusted, both in terms of harvest methods and spatial limits, to account for recent information relative to the historic range of variation and natural disturbance regimes on the Bighorns.

Roadless Area Allocation and Management

Current Direction: The President signed the Wyoming Wilderness Act of 1984 (PL 98–550) which designated the 189,039 Cloud Peak Wilderness on the Bighorn National Forest. The Act also released all remaining areas (those areas not designated as wilderness by the act) to multiple-use management. The current plan allocates many of these remaining roadless areas to prescriptions which allow road building. Approximately 69 percent of the Forest is now classified as roadless.

Need for Revision: Inventory of roadless areas is a requirement in the revision process (36 CFR 219.17). Management of inventoried roadless areas continues to be controversial. These conflicts are a result of varying resource demands on the roadless areas.

Proposed Action: The proposed action is to complete an inventory of roadless areas, evaluate these areas to determine wilderness potential (36 CFR 219.17), and allocate the roadless areas to varying management area prescriptions with an emphasis on late successional forest and natural disturbances.

Special Areas

The Bighorn National Forest includes several unique or outstanding areas or resources of physical, biological, or social interest. Collectively these are referred to as ''special areas''. They may include Wilderness (also discussed above); Wild and Scenic Rivers; Research Natural Areas; and other special areas with scenic, historical, cultural, geological, archaeological, or other outstanding characteristic.

Current Direction: In the current plan, there is one management area designated specifically for Wild and Scenic Rivers. The Little Big Horn and Tongue Rivers were determined to be eligible as potential additions to the National Wild and Scenic Rivers System. Designation of the Little Big Horn as Wild and Scenic was recommended to Congress. Congress did not act to officially designate the river, however both remain under the wild and scenic management prescription and their unique qualities are currently safeguarded by specific standards and guidelines.

As mentioned above the Cloud Peak Wilderness area currently consists of 189,039 acres. The Forest Plan was amended in 1998 to revise the standards and guidelines used to manage this Wilderness.

The current plan designated two Research Natural Areas (RNAs), Bull Elk Park (718 acres) and Shell Canyon (730 acres). Several additional areas have been inventoried for possible additions in cooperation with the University of Wyoming.

Based on current data, there is a heritage resource for every 92 acres of land surveyed, or approximately 7 sites per section on the Bighorn National Forest. These range from the nationally recognized Medicine Wheel National Historic Landmark, to numerous lesser known historic and prehistoric sites and properties. Another important component of the Forests heritage resources is the recognition and protection of Native American Indian spiritual sites.

Need for Revision: The Wild and Scenic Rivers Act, as amended (December 31, 1992) and Forest Service handbook 1909.12, Chapter 8 direct the Forest Service to evaluate rivers for inclusion in the National Wild and Scenic River System during forest planning. Proposed designation of portions of two eligible rivers, the Little Big Horn and the Tongue, has not been acted on by Congress. These two rivers, as well as other rivers on the forest, need to be evaluated to determine their eligibility for inclusion into the Wild and Scenic River System.

The Forest Service is also required, where applicable, to recommend designations of other special areas such as additions to Wilderness (36 CFR 219.17).

Authority to establish RNA's is delegated to the Chief of the Forest Service at 7 CFR 2.60(a) and 36 CFR 251.23 and shall be made during the planning process. Several potential additions have been recently inventoried.

Better direction needs to be established for the management of the abundant cultural and historic resources on the Bighorn National Forest. Of particular need is to incorporate the Heritage Protection Plan around Medicine Mountain, including the Medicine Wheel National Historic Landmark.

Proposed Action:

- Rivers and streams determined to be eligible for potential inclusion in the Wild and Scenic River System will be examined. The next step in the process, the suitability analysis and recommendation to Congress, will not be done as part of this revision.
- Existing roadless areas will be examined for possible recommendation as additions to the Cloud Peak Wilderness Area.
- Areas on the Forest that have been recently inventoried for RNA values will be examined and considered as possible additions to the RNA program to help meet regional and national goals.
- The protection and management of cultural and historic resources will be revised and updated. Of particular need is an increased awareness of Native American sacred sites.

Travel and Dispersed Recreation Management

Current Direction: The demand on the Bighorn Forest for motorized use is significant. Four-wheel drive and all terrain vehicle (ATV) interests want continuing opportunities for off-road and primitive road use. Other recreationists participating in nonmotorized recreation activities are demanding fewer roads and trails be open to motorized use. The existing 1985 Forest Plan incorporated the 1983 travel management plan and map by reference. This travel map has been updated and corrected periodically since 1985.

Dispersed recreation includes all those activities that occur outside developed site i.e. campgrounds and picnic areas. Currently, approximately 60% of total recreation user days on the Forest is dispersed recreation. Estimates indicate this use is increasing at about 2% per year. This level of demand is limiting opportunities for dispersed camping, particularly on weekends and high use times of the year.

Need for Revision: Issues and management concerns related to travel management have increased significantly since the 1985 Plan was signed. Use figures for traditional recreation travel, such as pleasure driving, horseback riding, and motorbiking have grown steadily. Other used and demands, such as all-terrain vehicles, snowmobiles, and mountain bikes have dramatically increased over the last decade. Resource impacts and user conflicts have increased proportionately with the increased demand. There is very little specific direction in the existing plan for travel management.

Likewise, many activities associated with dispersed recreation use are creating unacceptable impacts on the land. These include the destruction of riparian areas around dispersed camping sites and popular fishing streams, impacts on water quality at popular dispersed recreation sites resulting from the improper disposal of litter, garbage, and human waste. The destruction of vegetation and the development of ''human browse lines'' from collecting firewood in heavily used areas, recreational stock damage, including tree girdling, root exposure, soil compaction, and the widening and pioneering of new roads and trails, often in environmentally sensitive areas are also management concerns.

Proposed Action: The following actions will be proposed in one or more EIS alternatives:

- Identify an updated road and trail transportation network that provides an environmentally sound and socially responsive travel management system which is consistent across the Forest and well coordinated with adjacent private and public lands.
- Designate permanent or seasonal travel restrictions on those routes that will be decommissioned. Identify new road and trail locations or alignments that are needed to enhance travel needs or protect recourse values.
- Clearly specify whether or under what conditions motorized use is allowed in each management area (MA) prescription; provide appropriate standards and guidelines.
- Provide the programmatic Forest wide direction and ''Framework'' for a site specific travel management plan that is responsive to the issues developed in the revision process. A separate decision will be made on the site specific travel plan.
- Eliminate cross-country motorized travel except on designated routes.
- Adoption of those portions of the pending ''Roads Analysis Process'' which are specified for forest-level planning, when the policy becomes final.
- The revision of dispersed recreation standards and guidelines will be considered concurrently with travel management proposals to insure consistency.
- Begin a pilot program of ''designated dispersed camping'' ie camping only at designated sites that provide no facilities. Construct toilets and/or require self-contained units in highly impacted areas.

Involving the Public

The Regional Forester gives notice that the Forest is beginning an environmental analysis and decision-making process for this proposed action. We encourage any interested or affected people to participate in the analysis and contribute to the final decision.

We will provide opportunities for open public discussion of the following proposed action and changes to the revision topics. We encourage the public to comment on this specific proposal. Focusing on the following proposal will generate specific scoping comments on the revision topics and decisions to be made and make the revision process more effective. The Analysis of the Management Situation contains baseline information, including the management areas and the No Action Alternative, to help evaluate how the proposed action and the alternatives address the revision topics and the six decisions (listed previously) made in forest plan revisions. This information will be available in the spring of 2000.

We will develop a broad range of alternatives (including the No Action Alternative) to the proposed action based on the comments received and on further analysis. Accordingly, we expect the alternatives considered and the final decision to vary from what is put forth in the proposed action.

Public participation is invited throughout the revision process and will be especially important at several points during the process. We will make information available through periodic newsletters, news releases, the Internet on the Forests web site, (www.fs.fed.us./r2/bighorn) and various public meetings. The first public meeting will be held after the Analysis of the Management Situation is completed in the spring of 2000. Meeting dates will be well published through the media mentioned above.

Release and Review of the EIS

The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment in February of 2001. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register.** The comment period on the DEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposal action participate by the close of the three-month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in December of 2001. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding the revision. The responsible official will document the decisions and reasons for the decisions in a Record of Decision for the revised Plan. The decision will be subject to appeal in accordance with 36 CFR 217.

Dated: November 1, 1999.

Lyle Laverty,

Regional Forester, Rocky Mountain Region.

[FR Doc. 99–29354 Filed 11–9–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Forest System Roadless Areas; Correction

AGENCY: Federal Energy Regulatory Commission, USDA.

ACTION: Notice; correction.

SUMMARY: On October 19, 1999, the Forest Service published in the **Federal Register** a notice of intent to prepare an environmental impact statement for a proposed rule for the protection of roadless areas. The e-mail address in that notice was incorrect.

FOR FURTHER INFORMATION CONTACT: Christopher Wehrli, telephone: (801) 517–1037.

Correction

In the **Federal Register** of October 19, 1999, in FR Doc. 99–56306, on page 56306, in the second column, the first paragraph under the **ADDRESSES** caption should read:

ADDRESSES: Send written comments to the USDA Forest Service-CAET, Attention: Roadless Areas NOI, P.O. Box 221090, Salt Lake City, Utah 84122 or by e-mail through World Wide Web access to: roadless/wo__caet-slc@fs.fed.us.

Dated: November 4, 1999.

James R. Furnish,

Deputy Chief, National Forest System.

[FR Doc 99–29399 Filed 11–9–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Public Meetings on National Forest System Roadless Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: On October 19, 1999, the Forest Service published a notice of intent to prepare an environmental impact statement to initiate the scoping process for a proposed rule for the protection of roadless areas on National Forest System lands. The agency is giving notice of public meetings that are being held as part of this scoping effort.

DATES: The meetings are scheduled from November 16 through December 1, 1999

ADDRESSES: The meetings will be held at the locations and times listed in the table under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Christopher Wehrli, Content Analysis Enterprise Team, telephone: (801) 517–1037; e-mail: roadless/wo__caet-slc@fs.fed.us

SUPPLEMENTARY INFORMATION: In addition to requesting written comment in response to the notice of intent published October 19, 1999 (64 FR 56306), the Forest Service is providing an opportunity for the public to participate in scoping meetings on the proposal for protecting the remaining roadless areas within the National Forest System. At these meetings, the agency will clarify the differences between this initiative and the soon to be released proposed changes to the National Forest System Transportation System rules at 36 CFR part 212 and to Forest Service Manual direction.

To accommodate larger numbers of attendees, two scoping meetings will be held each night at the locations and times listed in the following table. Attendees may select either session.

Date	City	Location	Time
Tuesday, November 16	Albuquerque, NM	Albuquerque Convention Center, 401 Second Street, NW.	6:00–7:30 7:30–9:00
Tuesday, November 16	Milwaukee, WI	University of Wisconsin, Chemistry Building, Room 180, 3210 N. Cramer Avenue.	5:00–6:30 6:30–8:00
Wednesday, November 17	Salt Lake City, UT	Salt Palace Convention Center, 100 South West Temple.	6:00–7:30 7:30–9:00
Wednesday, November 17	Missoula, MT	University of Montana, Gallagher Busi. Bldg., Room 123, Arthur and Connell Avenues.	6:00–7:30 7:30–9:00
Thursday, November 18	Denver, CO	Embassy Suites Downtown Denver, 1881 Curtis Street	6:00–7:30 7:30–9:00
Thursday, November 18	Juneau, AK	Centennial Hall Convention Center, 101 Egan Drive	5:00–6:30 6:30–8:00
Tuesday, November 30	Portland, OR	Oregon Convention Center, 777 NE Martin Luther King Blvd..	5:00–6:30 6:30–8:00
Tuesday, November 30	Atlanta, GA	Georgia International Convention Center, 1902 Sullivan Road.	6:30–8:00 8:00–9:30
Wednesday, December 1	Sacramento, CA	Capitol Plaza Halls, 1025 9th Street	6:00–7:30 7:30–9:00

Date	City	Location	Time
Thursday, December 9	Washington, DC	Hyatt Arlington, 1325 Wilson Blvd., Arlington, VA 22209	6:30–8:00 8:00–10:00

Public scoping meetings will be held at the National forest level. Forest Supervisors will give notice of these meetings in newspapers of local circulation and through other media.

Dated: November 4, 1999.

James R. Furnish,

Deputy Chief, National Forest System.

[FR Doc. 99–29398 Filed 11–9–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Race and National Origin Information of Job Applicants

ACTION: Proposed collection; Comment request.

SUMMARY: The U.S. Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 10, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, D.C. 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Debby Blackwood, Office of Human Resources Management, Office of Programs and Policies, Room 5102, 14th and Constitution Avenue, NW, Washington, D.C. 20230, (202) 482–6187.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce is below parity with the relevant civilian labor force representation for many of our primary occupations. The only method to determine if there are barriers in the recruitment and selection process for these occupations is to track groups that apply and how they fare through the selection process. Without this information, DOC does not have the ability to evaluate the effectiveness of its recruitment efforts, or to determine barriers in its selection process. There is no other objective way to make these determinations, and no source of this information other than from applicants.

The race and national origin (RNO) information of job applicants was previously collected by all Federal agencies using OPM Form 1386. The form expired several years ago and DOC is seeking to establish a replacement form. It will not be a required part of their application package. A number of Federal agencies have already recreated this form for the same purpose—collecting race, national origin, gender and disability information of job applicants.

The information is not provided to selecting officials and plays no part in the selection of individuals. Instead, it is used in summary form to determine trends over many selections within a given occupation or organizational area. The information is treated in a very confidential manner.

II. Method of Collection

Initially job applicants will complete the form in a paper version and submit it with their application. DOC is in the process of automating this form. Applicants should have the option of completing the form electronically within a year. Those without access to automated applicant processing will be able to continue submitting a paper version. Job applicants complete the form on a voluntary basis.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals Seeking Employment.

Estimated Number of Respondents: 10,000.

Estimated Time Per Response: 5 minutes.

Estimated Annual Burden Hours: 833.33.

Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 3, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–29454 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Payment of Patent and Trademark Office Fees by Credit Card.

Form Numbers: PTO–2038.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 20,000 hours per year.

Number of Respondents: 100,000 responses per year.

Avg. Hours Per Response: 12 minutes (0.2 hours) to complete the credit card form, PTO–2038 U.S. Patent & Trademark Office Credit Card Payment Form.

Needs and Uses: The PTO is required to collect fees during the patent process, during the trademark process, and for information products through its laws and regulations. This fee collection is required in 35 U.S.C. 41 and 15 U.S.C. 1113 and in 37 CFR 1.16 through 1.26, 1.492, 2.6, and 2.7. The public uses the

credit card form to submit their credit card information to the PTO so that the PTO staff can charge the fees for the indicated services to a specific credit card. The PTO uses the information collected from this form to apply the fee(s) to the specific action or item and to determine whether the appropriate fee(s) as required by law has been submitted.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, Federal government, and state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Peter Weiss, (202) 395–3630.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Office of the Chief Information Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Peter Weiss, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: November 4, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–29457 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Secretary's 2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 96–523, 94–409, Public Law Public 92–375), we are giving notice of a meeting of the Commerce Secretary's 2000 Census Advisory Committee. The Committee will continue to review operational and procedural plans, as well as data product plans for Census 2000. Last minute changes to the schedule are possible, and they could prevent us from giving advance notice.

DATES: On Thursday, December 2, 1999, the meeting will begin at 9 a.m. and adjourn at approximately 5 p.m. On Friday, December 3, 1999, the meeting will begin at 9 a.m. and adjourn at approximately 2 p.m.

ADDRESSES: The meeting is at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 1647, Federal Building 3, Washington, DC 20233; telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Committee Secretary's 2000 Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Committee considers the goals of Census 2000 and user needs for information provided by that census. The Committee provides an outside user perspective about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Committee provides a targeted review focused on the conduct of Census 2000.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer on 301–457–2308, TDD 301–457–2540.

Dated: November 4, 1999.

Robert J. Shapiro,

Under Secretary for Economics Affairs Economics and Statistics Administration.

[FR Doc. 99–29442 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Reports of Sample Shipments of Chemical Weapon Precursors

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 10, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Office of the Chief Information Officer, Room 5027, 14th and Constitution Avenue, NW, Washington DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Office of Planning, Evaluation and Management, Room 6881, 14th and Constitution Avenue, NW, Washington DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information will be used to monitor sample shipments of chemical weapon precursors in order to facilitate and enforce provisions of the EAR that permit limited exports of sample shipments without a validated export license. The reports will be reviewed by the Bureau of Export Administration to monitor quantities and patterns of shipments that might indicate circumvention of the regulation by entities seeking to acquire chemicals for chemical weapons purposes.

II. Method of Collection

Quarterly report.

III. Data

OMB Number: 0694–0086.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 75.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 225.

Estimated Total Annual Cost: $0 (no start-up costs or capital expenditures).

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 4, 1999.

Linda Engelmeier,

Departmental Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–29455 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Notification of Delivery Verification Requirement

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 10, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Office of Planning, Evaluation and Management, Department of Commerce, Room 6881, 14th & Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

In order to increase the effectiveness of export controls on international trade in strategic commodities, certain countries participate in the Import Certificate/Delivery Verification (IV/DV) procedure. Its purpose is to make sure that strategic items are not diverted. The clearance request is for the form used to notify U.S. exporters that they must obtain from their foreign consignee an ''Import Certificate.'' This certificate, which is issued by the foreign government, certifies that the commodities exported were actually delivered to the foreign consignee. When the certification has been received, the U.S. exporter must complete the BXA form and return it along with the Import Certificate to BXA.

II. Method of Collection

Submission of completed form and Import Certificate.

III. Data

OMB Number: 0694–0008.

Form Number: BXA 648–P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 4, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–29456 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–830]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall (Companhia Siderúrgica Nacional or CSN), Mark Ludwikowski or Martin Odenyo (Usinas Siderúrgicas de Minas Gerais and Companhia Siderúrgica Paulista or USIMINAS/COSIPA), Nancy Decker, or Robert M. James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, DC 20230; telephone: (202) 482–1398, (202) 482–2704, (202) 482–5254, (202) 482–0196 and (202) 482–5222, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1999).

Preliminary Determination

We preliminarily determine that cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel products) from Brazil are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

The Department initiated this investigation on June 21, 1999. See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, 64 FR 34194 (June 25, 1999) (Initiation Notice). Since the initiation of the investigations, the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. From July through October 1999, the Department received responses from a number of parties including importers, respondents, consumers, and petitioners, aimed at clarifying the scope of the investigation. See Memorandum to Joseph A. Spetrini, dated November 1, 1999 (Scope Memorandum) for a list of all persons submitting comments and a discussion of all scope comments. There are several scope exclusion requests for products which are currently covered by the scope of this investigation that are still under consideration by the Department. These items are considered to be within the scope for this preliminary determination; however, these requests will be reconsidered for the final determination. See Scope Memorandum.

On June 21, 1999, the Department invited interested parties to submit comments regarding the criteria to be used for model matching purposes. On June 28 1999, petitioners (Bethlehem Steel Corporation, Gulf States Steel, Inc., Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, Steel Dynamics, Inc., U.S. Steel Group, a unit of USX Corporation, Weirton Steel Corporation, the Independent Steel Workers Union, and the United Steelworkers of America) and respondents (CSN, USIMINAS, and COSIPA) submitted comments on our proposed model matching criteria.

On June 22, 1999, the Department issued Section A antidumping questionnaires to Cia Acos Especiais Itabira, Mangels Industria e Comercio Ltda., Armco do Brazil S.A., CSN, USIMINAS, and COSIPA. On July 9, 1999, the Department issued Sections B–E of the antidumping questionnaires to CSN, USIMINAS, and COSIPA.

On July 1, 1999, Brasmetal Waelzholz, S.A. submitted a letter identifying itself as a producer/exporter of the subject merchandise and asked to be considered as a respondent in this investigation. On July 9, 1999 the Department decided to limit the examination of producers/exporters of subject merchandise, and not to investigate voluntary respondents unless mandatory respondents should fail to cooperate in the investigation. The Department selected CSN, USIMINAS, and COSIPA as mandatory respondents. Consequently, Brasmetal was not selected as a mandatory respondent in this investigation. See Memorandum to Joseph A. Spetrini, dated July 9, 1999.

On July 19, 1999, the United States International Trade Commission (ITC) notified the Department that it preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by the reason of imports of the subject merchandise from Brazil.

On July 20, 1999, the Department received the Section A questionnaire responses from CSN, USIMINAS, and COSIPA. Petitioners filed comments on CSN's, USIMINAS' and COSIPA's Section A questionnaire responses on August 3, 1999. The Department issued supplemental questionnaires for Section A to CSN, USIMINAS, and COSIPA on August 24, 1999.

On August 30 and September 7, 1999, the Department received responses to Sections B, C, and D of the questionnaire from CSN, USIMINAS, and COSIPA. On October 12, 1999, the Department issued a decision memorandum collapsing USIMINAS and COSIPA for purposes of this investigation pursuant to section 351.401(f) of the Department's regulations. See Affiliated Respondents section below. Petitioners filed comments on CSN's and USIMINAS/COSIPA's Section B–D questionnaire responses on September 7 and September 8, 1999. The Department issued supplemental questionnaires for Sections B, C, and D to CSN and USIMINAS/COSIPA on September 10, 1999. The Department received responses to the Section A supplemental questionnaires on September 14, 1999, and responses to the Sections B–D supplemental questionnaires on October 4, 1999.

On July 12 and July 26, 1999, USIMINAS and COSIPA requested that they not be required to report home market sales of non-rectangular shapes of steel, otherwise known as non-rectangular blanks, and that they not be required to report home market sales through three affiliated resellers. On August 27, 1999, the Department excused USIMINAS and COSIPA from reporting home market sales of non-rectangular blanks, subject to verification. However, the Department will examine at verification whether non-rectangular blanks are sufficiently similar to U.S. sales to warrant model match comparisons. We also determined that the respondents should report home market sales by the affiliated resellers. See Memorandum to Joseph A. Spetrini, dated August 27, 1999.

Period of Investigation

The period of the investigation (POI) is April 1, 1998, through March 31, 1999. This period corresponds to each respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, June 1999).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) iron predominates, by weight, over each

of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and

(a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or

(b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);

- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inches

Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	< 0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm

Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm^2
Hardness	≥475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	< 0.2% of nominal strip width

Microstructure:

Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤0.04
Oxide Inclusion	≤0.05

Compressive Stress: 10 to 40 Kgf/mm^2

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t ≤ 0.209	Rz ≤ 0.5
0.209 < t ≤ 0.310	Rz ≤ 0.6
0.310 < t ≤ 0.440	Rz ≤ 0.7
0.440 < t ≤ 0.560	Rz ≤ 0.8

SURFACE ROUGHNESS—Continued

Thickness (mm)	Roughness (μm)
0.560 < t	Rz ≤ 1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:
  Thickness: ≤ 0.100 mm +/− 7%
  Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤ 0.07	0.2–0.5	≤ 0.05	≤ 0.05	≤ 0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	< 3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤ 0.3 micron
Camber (in 2.0 m)	< 3.0 mm
Flatness (in 2.0 m)	≤ 0.5 mm
Edge Burr	< 0.01 mm greater than thickness
Coil Set (in 1.0 m)	< 75.0 mm

- Certain silicon steel, which meets the following characteristics:
  Thickness: 0.024 inches +/− .0015 inches
  Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

- Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
  Thickness: 0.025 to 0.245 mm

Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	< 0.01	0.004 to 0.007	< 0.007

- Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.
Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

- Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.
Surface Treatment as follows
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

- Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness and size of 0.38 mm × 940 mm × coil, and with a bright finish;
- Certain cold-rolled steel sheet, which meets the following characteristics:
  Thickness (nominal): ≤ 0.019 inches
  Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		.....
Min. Weight %		0.010	0.012

- Certain band saw steel, which meets the following characteristics:
  Thickness: ≤ 1.31 mm
  Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤ 0.007	0.3 to 0.5	≤ 0.25

Other properties:
Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonably examined.

After consideration of the complexities expected to arise in these proceedings and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. We selected CSN, USIMINAS, and COSIPA as mandatory respondents because these are the three largest producers and they account for the vast majority of U.S. imports. Further, we determined not to investigate voluntary respondents, including Brasmetal Waelzholz, unless mandatory respondents fail to cooperate. See Memorandum to Joseph A. Spetrini on respondent selection dated July 9, 1999.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by respondents covered by the description in the Scope of Investigation section above and sold in Brazil during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, the Department compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping questionnaire and reporting instructions.

Affiliated Respondents

Under section 771(33)(E) of the Act, if one party owns, directly or indirectly, five percent or more of the other, they shall be considered to be affiliated. Since USIMINAS owns 49.79% of COSIPA, the Department determined that USIMINAS and COSIPA are affiliated. See Memorandum to Joseph A. Spetrini, dated October 12, 1999.

Furthermore, it is the Department's practice to collapse affiliated producers for purposes of calculating a margin when the affiliated producers have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities and when the facts demonstrate that there is significant potential for manipulation of pricing or production. In accordance with section 351.401(f) of the Department's regulations, the Department concluded that both companies are fully integrated producers currently offering a similar range of products, including cold-rolled steel products, and that their facilities would not require substantial retooling to restructure manufacturing priorities. Furthermore, in light of USIMINAS' high level of ownership of COSIPA, common directors, and the fact that COSIPA is consolidated on USIMINAS' financial statements, there is a significant possibility of price or production manipulation between the two companies. For these reasons, the Department collapsed USIMINAS and COSIPA into one entity for the purpose of this investigation. See *Id*.

While it also appears that there may be links between the collapsed entity, USIMINAS/COSIPA, and CSN, there is insufficient information on the record at this time to consider all three companies to be affiliated or to collapse CSN with USIMINAS/COSIPA. Therefore, we preliminarily do not find CSN to be affiliated with USIMINAS/COSIPA, and we preliminarily are not collapsing CSN with USIMINAS/COSIPA.

The Department notes that affiliation and collapsing are very complex and difficult issues. Therefore, the Department invites parties to submit information and comment on these issues to ensure that our decision is based on a complete and thorough record. The Department intends to examine these issues carefully for the final determination of this investigation. Any new information that parties wish to provide the Department must be submitted no later than November 8, 1999. All information or arguments parties provide will be fully analyzed in making our final determination.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value (NV) based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or constructed export price (CEP) transaction. The NV LOT is that of the starting price of sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting price

sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

CSN

In the home market CSN made sales to service centers/distributors and end-users. The company claims two levels of trade with respect to these sales: (1) CSN ''direct'' sales to unaffiliated end-user customers; and, (2) sales through Industrial Nacional de Acos Laminados S.A. (INAL) (an affiliated service center/distributor) and sales further processed under a tolling arrangement with an unaffiliated company (toller), before going to unaffiliated customers. CSN reported ''no channels of distribution'' in the home market in its original August 30, 1999, Section B questionnaire response because it claims no distinction in the channels of distribution. CSN did, however, report a code identifying the type of sale (*i.e.*, CSN direct sales, INAL sales, *etc.*). In the U.S. market CSN reported sales to two types of customers: trading companies and distributors. CSN reported ''no channels of distribution'' in the U.S. market since it claims that they have no impact on pricing.

Although somewhat unclear, it appears that CSN is actually claiming that in the home market it has two channels of distribution involving different marketing stages (direct sales and affiliated distributor sales). In the United States CSN appears to be claiming only a single level of trade.

In determining whether separate LOTs actually existed in the home market, we first examined whether CSN's sales involved different selling functions along the chain of distribution between CSN and its unaffiliated customers. CSN stated that it sells some products directly, and other products through INAL or as merchandise further processed by an unaffiliated toller. CSN claims that INAL and the toller perform additional services beyond those performed on direct sales. Taking into account whether or not sales are made through intermediate parties, it appears that CSN's direct sales may be at a different stage of marketing than its other sales, because these sales were sold directly from the mill to the unaffiliated customer, whereas sales through the other channel involved an affiliated intermediary or tolling by an unaffiliated party before going to an unaffiliated customer. This would indicate that CSN has two home market LOTs.

However, in further analyzing CSN's home market levels of trade, we reviewed available information on the record about the company's selling functions pertaining to each of these channels of distribution. In its initial response, dated July 20, 1999, CSN claimed that it provided warranties, technical assistance, returns, and freight. From the written description, we determine that warranties and returns cover the same selling functions. In a supplemental response, CSN identified six different selling functions: freight/delivery arrangement, further processing into smaller lots, custom-made products, ''end-user information'', inventory maintenance, and just-in-time delivery (see page 24 of CSN's October 4, 1999, response to the Department's supplemental for Section B). CSN has not provided narrative information on ''end-user information.'' Therefore we are not considering this as a selling function. In addition, further processing into smaller lots and custom made products do not appear to be traditional selling functions relevant to the Department's LOT analysis but, rather, are production costs. Also, we decided to combine two selling functions, inventory maintenance and just-in-time delivery (which together we refer to as ''warehousing''), because we found that they were not sufficiently different to warrant being treated as unique selling functions. Although these two responses are somewhat inconsistent, we conclude that CSN performed four selling functions in its home market: freight, warehousing, warranty, and technical assistance.

Next, we examined whether these selling functions are provided consistently across both channels of distribution in the home market, finding that warehousing is rarely performed on CSN direct sales while it is performed to some extent on INAL/toller sales. The other selling functions are provided equally across both channels of distribution.

In conclusion, while CSN claimed two different levels of trade based on differences in selling functions in connection with each LOT, we find that the actual differences in selling function are relatively minor. Therefore, we preliminarily determine that only one LOT exists for CSN in the home market.

In determining the LOT in the U.S. market, we examined the selling functions performed by CSN for its U.S. sales which, as discussed elsewhere, were all made on an EP basis. CSN reported the following selling activities and services for direct sales in the home market, as well as EP sales in the U.S. market: warranties, returns, and freight. As noted above, we interpret warranties and returns to constitute the same selling function. Thus, we conclude that CSN has two U.S. selling functions: warranty and freight.

In analyzing the differences between stages of marketing (or their equivalent) and selling functions along the chain of distribution between CSN and its unaffiliated customers, we have concluded that all of CSN's U.S. sales are at one stage of marketing because they are all direct EP sales from CSN to unaffiliated importers in the United States, involving the same reselling functions. CSN noted that it did not claim different channels of distribution since they have no impact on pricing. CSN sells to two types of customers in the U.S. market: trading companies and distributors.

We next compared EP sales to home market sales to determine whether they were made at the same LOT. To perform this analysis, we compared the selling functions offered by CSN on its EP sales to the functions performed on its home market sales. As noted, CSN has four home market selling functions (warranty, freight, technical assistance, and warehousing) and two U.S. selling functions (warranty and freight). However, CSN reported that its home market warehousing to many customers was only performed rarely or to a limited degree. We find that limited warehousing and technical assistance do not constitute a significant difference between the services provided to home market and U.S. customers. The information on record indicates that, for both EP and home market transactions, CSN performed similar selling functions. Consequently, the Department preliminarily determines

that there is only one LOT in the home market and that it is at the same level as the single LOT in the U.S. market. Therefore, no LOT adjustment was necessary.

USIMINAS/COSIPA

In the home market USIMINAS/COSIPA made sales to end-users, affiliated distributors, and unaffiliated distributors. USIMINAS/COSIPA claims seven ''channels of distribution'' with respect to home market sales: (1) mill to OEMs; (2) mill to affiliated distributor; (3) mill to unaffiliated distributor; (4) affiliated distributor to affiliated distributor; (5) affiliated distributor to OEM; (6) affiliated distributor to non-affiliated distributor; and (7) affiliated distributor to retailer.

USIMINAS/COSIPA claims that there is a significant difference between prices charged to end-users and prices charged to distributors. USIMINAS/COSIPA further claims that prices charged to distributors and to end-users differ significantly from prices charged by affiliated distributors to their downstream customers.

Although the record is somewhat unclear, we have analyzed USIMINAS/COSIPA's arguments with respect to its home market LOT. The seven ''channels'' which USIMINAS/COSIPA identifies apparently are only single steps in the channels of distribution to unaffiliated purchasers. The actual channels appear to be the following: (1) mill to OEM; (2) mill to unaffiliated distributor (or affiliated distributor at arm's length prices); (3) mill through affiliated distributor to OEM; (4) mill through affiliated distributor to unaffiliated distributor; and (5) mill through affiliated distributor to retailer. In examining these channels, there appear to be two potential home market LOT: (1) direct sales from the mill to unaffiliated parties (''mill direct sales''); and (2) sales through affiliated distributors to unaffiliated parties (''downstream sales'').

In determining whether separate levels of trade actually existed in the home market, the Department first examined available information on the record about the company's selling functions for each channel of distribution. USIMINAS/COSIPA indicated that the selling functions performed by the affiliated distributors on downstream sales are much more significant than those performed by USIMINAS/COSIPA itself in the first three home market channels of distribution (*i.e.*, mill direct sales). The following are the selling functions provided for downstream sales: inventory maintenance, after sales service/warranties (to a small degree), special warehousing, technical advice (to a small degree), freight and delivery arrangement (to a great degree), and special processing (cutting to customer's desired length). USIMINAS and COSIPA perform the following services on mill direct sales: after sales service/warranties (to a small degree), technical advice (to a small degree), and freight and delivery arrangement (to a small degree). Of these selling functions, special processing does not appear to be a traditional selling function relevant to the Department's LOT analysis but, rather, is a production cost. In addition, we decided to combine two selling functions, inventory maintenance and special warehousing (which, together, we refer to as ''warehousing''), because we found that they were not sufficiently different to warrant being treated as unique selling functions. Based on this information, we determined that the selling functions of the affiliates for downstream sales were significantly different than those for mill direct sales, and therefore, we have determined that downstream sales by affiliates were made at a different LOT than other HM sales.

While USIMINAS/COSIPA mill direct sales to end-users (whether or not further processed) and mill direct sales to unaffiliated distributors involve different channels of distribution, these sales do not involve significant differences in selling functions. Therefore, we do not consider these channels to represent different levels of trade. Thus, we preliminarily determine that downstream sales and mill direct sales represent two different home market LOTs.

In the U.S. market USIMINAS/COSIPA claim that all sales were made at one level of trade, through one channel of distribution. USIMINAS/COSIPA state that all U.S. sales were made to unaffiliated trading companies. USIMINAS/COSIPA state that these sales are made at the same level of trade as USIMINAS/COSIPA's mill direct home market sales to unaffiliated distributors. However, as noted above, the Department finds the selling functions of all home market mill direct sales (whether to unaffiliated distributors or to OEMs) to be quite similar to each other, thus constituting a single LOT. The Department additionally finds the selling functions for mill direct sales to be similar to U.S. sales. The only selling functions associated with U.S. sales are after sales service/warranties and freight and delivery arrangements, which are also provided to home market mill direct customers. The only other selling function offered for home market mill direct sales is a limited amount of technical advice. Both home market mill direct sales and U.S. sales involve sales to large customers, including service centers/distributors that resell steel. (U.S. sales are only made to resellers.) Therefore, based on our analysis of selling functions, the Department finds U.S. sales to be at the same LOT as home market mill direct sales. Therefore, U.S. sales were only compared to home market mill direct sales, and no LOT adjustment was necessary.

Fair Value Comparisons

To determine whether sales of cold-rolled steel products from Brazil were made at less than fair value, we compared the EP to the NV, as described in the Export Price and Normal Value sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Transactions Investigated

As stated in 19 CFR 351.401(i), the Department will use invoice date as the date of sale unless another date reflects the date on which the exporter or producer establishes the material terms of sale. Both CSN and USIMINAS/COSIPA reported the date of the nota fiscal (*i.e.*, the date the product leaves the factory) as the date of sale.

CSN maintains that it uses the date of the nota fiscal for home market sales in its accounting records because this is the date on which material terms of sale are finalized. Moreover, CSN notes that it adds estimated freight and insurance expenses to each invoice, which are not confirmed in writing until the date of the nota fiscal. For its U.S. sales, CSN reported the date of the nota fiscal to be consistent with the Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756 (July 19, 1999) (Hot Rolled Steel). CSN notes, however, that it disagrees with the determination in Hot Rolled Steel that the appropriate date of sale for CSN's U.S. sales is the ex-factory shipment date (*i.e.*, nota fiscal date). CSN argues that the date of commercial invoice (*i.e.*, the invoice issued on the date of shipment from the port) should be the date of sale.

USIMINAS and COSIPA maintain that for their home market sales, the nota fiscal is the date on which the material terms of sale are first finalized. The nota fiscal is also used by both companies' accounting systems to register home market sales. For their U.S. sales,

USIMINAS and COSIPA both reported the date of the nota fiscal to be consistent with Hot Rolled Steel. USIMINAS notes, however, that it disagrees with the use of this date as there can be changes in quantities or prices to the ultimate customer after the nota fiscal date and that the commercial invoice date (*i.e.*, the invoice issued on the date of shipment from the port) should be the date of sale. USIMINAS claims that the commercial invoice is the date to which all U.S. sales are tied in its accounting system. COSIPA indicated that the nota fiscal and the commercial invoice for U.S. sales are issued on the same date.

For this preliminary determination, we are using the dates reported by respondents as the date of sale. Thus, for both home market and U.S. sales we are using the nota fiscal date as the date of sale. We intend to fully examine date of sale during verification and will incorporate our findings, as appropriate, in our analysis for the final determination.

Export Price

We based our calculations on EP, in accordance with section 772 of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. Furthermore, we calculated EP based on packed prices charged to the first unaffiliated customers in the United States. We made company-specific adjustments as follows:

CSN

We made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: discounts, foreign inland freight, international freight, and foreign brokerage and handling expenses.

In addition, for sales for which payment has not been received, we recalculated credit expenses using the due date of the respondent's supplemental submission (October 1, 1999), rather than the date of the first response (August 30, 1999). Because it is CSN's stated practice to charge late payment fees, we imputed home market interest revenue for sales on which payment has not yet been received. For U.S. sales, we have reclassified as discounts, certain payments to a customer of CSN, which CSN had reported as commissions. A discount is a reduction in price to a customer, while a commission is a form of payment for services. Therefore, the issue is whether there was one transaction between CSN and the ultimate customer in which the trading company acted as a sales agent for a commission, or whether there were two transactions, one in which the trading company bought from CSN and received a discount on the price for that initial sale and subsequently resold the merchandise to the ultimate purchaser. See Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Duty Review, 60 FR 65264, 65277–8 (December 19, 1995); Certain Carbon Steel Products from Austria; Final Determination of Sales at LTFV, 50 FR 33365 (August 19, 1985). We preliminarily determined that the latter situation exists in the present case.

USIMINAS/COSIPA

The Department made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, international freight, and foreign brokerage and handling expenses.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since each of the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for all respondents. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Arm's Length Test

CSN

CSN sold merchandise to an affiliated reseller (INAL). CSN reported sales by INAL to unaffiliated companies, and CSN did not sell to any other affiliated companies. Therefore, we did not need to perform the arm's length test.

USIMINAS/COSIPA

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length prices, and therefore, excluded them from our LTFV analysis. *See, e.g.*, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar product.

Cost of Production (COP) Analysis

Based on the cost allegation submitted by petitioners in the original petition, the Department found reasonable grounds to believe or suspect that respondents had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. See Initiation Notice. The Department conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, the Department calculated COP for cold-rolled steel products based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. The Department relied on the COP data submitted by each respondent in its cost questionnaire response except, as discussed below, in specific instances where the submitted costs were not appropriately quantified or valued.

CSN

The Department relied on CSN's COP and CV data submitted on October 4, 1999, except in the following instances: (1) We revised its general and

administrative (G&A) expense rate calculation to include non-operating expenses and to exclude all monetary correction items except those expenses related to accounts payable, and (2) we revised its financial expense ratio to include monetary corrections for financing losses and to exclude an offset for interest income from financial operations. See Cost Calculation Memorandum, dated November 1, 1999.

USIMINAS/COSIPA

The Department relied on USIMINAS/COSIPA's COP and CV data submitted on October 4, 1999, except in the following instances: (1) We revised its submitted G&A expense ratio to exclude packing expenses from the cost of goods sold used as the denominator in the calculation of the ratio; (2) we revised its submitted financial expense ratio to include expenses for export financing and foreign exchange losses related to export financing and exclude an offset for foreign exchange gains related to accounts receivable; and (3) for COSIPA we adjusted the transfer price for iron ore obtained from an affiliated supplier in accordance with the ''major input'' rule. See Cost Calculation Memoranda, November 1, 1999.

B. Test of Home Market Prices

The Department compared the weighted-average COP for each respondent, adjusted where appropriate (see above), to home market sales prices of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, the Department examined whether (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, the Department compared the COP to home market prices, less any applicable movement charges, taxes, billing adjustment, and discounts and rebates.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, the Department did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, the Department determined such sales to have been made in ''substantial quantities,'' in accordance with 773(b)(2)(C)(i) of the Act, within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because the Department compared prices to weighted-average COPs for the POI , the Department also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, the Department disregarded the below-cost sales.

Price-to-Price Comparisons

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 of the Department's regulations. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

Under section 777A(d)(1)(A) of the Act, we have broad authority to use a number of methodologies in calculating the average prices used to determine whether sales at less than fair value exist. More specifically, under section 351.414(d)(3) of the Department's regulations, the Department may use averaging periods shorter than the POI when normal value, export price, or constructed export price varies significantly over the POI. In this case, NV (in dollars) after January 12, 1999, varied significantly from NV earlier in the POI, due primarily to a significant change in the underlying dollar value of the real, evidenced by the precipitous and large drop that began in January 1999. As noted in the currency conversion section below, in late January and early February 1999 the real lost over 40 percent of its value. Consequently, it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. This methodology is consistent with our policy adopted in Stainless Steel Plate in Coils from Korea, 64 FR 15444, 15452 (March 31, 1999) and Stainless Steel Sheet and Strip from Korea, 64 FR 30664, 30676 (June 8, 1999) (Stainless Sheet from Korea). Therefore, for all respondents, we have used two averaging periods for this preliminary determination, the beginning of the POI through January 12, 1999, and January 13, 1999, through the end of the POI.

Brazilian Taxes

Consistent with past practice, we adjusted NV for the full amount of IPI and ICMS taxes collected on the subject merchandise because these are VAT taxes that have a basis for deduction according to section 773(a)(6)(B)(iii) of the Act. We did not deduct the Brazilian PIS and COFINS taxes as suggested by respondents in calculating NV. Since these taxes are levied on total revenues, the taxes are not imposed directly on the product or its components. Accordingly, there is no basis to deduct them in the calculation of NV under section 773(a)(6)(B)(iii) of the Act. See Final Results of Antidumping Duty Administrative Review: Certain Cut-To-Length Carbon Steel Plate from Brazil, 63 FR 12744, 12746 (March 16, 1998); and Notice of Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel from Brazil, 64 FR 38756, 38765 (July 19, 1999).

CSN

For CSN, we based NV on prices of home market sales that passed the cost test. We made adjustments for billing adjustments and certain taxes as discussed above. We made deductions, where appropriate, for foreign inland freight (net of taxes) pursuant to section 773(a)(6)(B) of the Act. We made COS adjustments for differences in credit, interest revenue, warranty expenses, and bank charges, where appropriate. We also made adjustments for home market inventory carrying costs and other indirect selling expenses, where appropriate, to offset differences between home market and U.S. commissions.

Under section 776(a) of the Act, if information is not available on the record, the Department may use the facts available. Section 776(b) of the Act provides that adverse inferences may be used in selecting from among the facts available when an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also, Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (1994). We found that the reported amount of CSN's U.S. commission payments did not match the amount of commissions it described in its narrative response; CSN described its commissions as a fixed percentage of the price, but the amount reported often differed from that percentage. In our September 10, 1999 supplemental questionnaire, we asked CSN to explain the commission calculations. In its

October 4, 1999 supplemental, CSN allegedly corrected the commissions in its database. However, analysis of the database submitted on October 4, 1999, reveals that the reported commissions still do not follow the reported methodology. Consequently, we are unable to determine whether the reported commission amounts are incorrect, or whether the methodology as described is incorrect. Further, as this problem has been pointed out to CSN, and CSN failed to correct the discrepancy, we conclude that CSN has not cooperated to the best of its ability with respect to this issue. Therefore, for purposes of this preliminary determination, as adverse facts available, if the reported U.S. commission is greater than the stated methodology, we are using the reported U.S. commission amount. However, when the reported amount is less than or equal to the stated methodology, we are adjusting the U.S. commission to the stated methodology.

An affiliated reseller of CSN reported its downstream sales made in the home market and the related COM. However, the reported COM has not been segregated between variable and fixed costs. Consequently, using the cost data as reported, we are unable to calculate an adjustment for the physical differences in merchandise. Therefore, as facts available, wherever CSN and the reseller sold identical products we replaced the reseller's variable COM (VCOM) with CSN's VCOM. In those instances where the reseller sold unique products we calculated a weighted-average percentage of the variable cost to the total COM for CSN. Then, we applied the result to the total COM reported by the affiliated reseller to attain the reseller's VCOM. We used this calculated VCOM to determine the adjustment to normal value related to the physical differences in merchandise.

USIMINAS/COSIPA

For USIMINAS/COSIPA we based NV on prices of home market sales that passed the cost test. We made deductions for billing adjustments, discounts, taxes, and rebates. We made deductions, where appropriate, for inland freight and inland insurance, pursuant to section 773(a)(6)(B) of the Act. We note that the deduction for inland freight should be net of VAT taxes. However, while we have requested this information, we did not receive it in time for this preliminary determination. Consequently, we have estimated an amount for VAT paid on inland freight and deducted the estimated VAT from the reported amounts. We made COS adjustments for imputed credit expense, interest revenue, and warranties.

For home market sales on which payment has not been received, USIMINAS/COSIPA stated that they used October 1, 1999, as a surrogate payment date. However, analysis of the database indicates that COSIPA used the date of the first submission. Section 776(b) of the Act provides that the Department may use the facts available when necessary information is not on the record. Therefore, in accordance with section 776(a) we must use facts available as facts available, we recalculated credit expenses for COSIPA for sales for which payment has not been received using the due date of the respondents supplemental submission (October 1, 1999), rather than the date of the first submission. Because it is standard practice for the respondents to charge late payment fees, we imputed home market interest revenue for COSIPA for sales on which payment has not been received.

Also, we have recalculated home market credit expenses so that credit expenses for all sales are based on prices net of taxes and billing adjustments.

USIMINAS made home market sales based on both actual and theoretical weight. U.S. sales were all made on actual weight. For USIMINAS'' home market sales made based on theoretical weight, USIMINAS did not provide a conversion factor to adjust the applicable weight, prices, and adjustments for these sales to an actual weight basis, for proper comparison to other home market sales and to U.S. sales. As facts available, we have applied a theoretical to actual weight cold-rolled steel conversion factor from the public file of Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Fifth Administrative Review. A copy of this factor was submitted on the record of the instant case by petitioners on October 8, 1999. For all home market theoretical weight sales, we multiplied the reported quantity by this factor and divided the reported prices and adjustments by this factor. We will review this topic at verification, and for purposes of the final determination, we will look at any information that may make this conversion more accurate.

Affiliated resellers of USMINAS/COSIPA reported their downstream sales made in the home market and the related COM. However, the reported COM has not been segregated between variable and fixed costs. Consequently, using the cost data as reported, we are unable to calculate an adjustment for the physical differences in merchandise. Therefore, as facts available, wherever USIMINAS/COSIPA and the reseller sold identical products we replaced the resellers' VCOM with USIMINAS/COSIPA's VCOM. In those instances where the resellers sold unique products we calculated a weighted-average percentage of the variable cost to the total COM for USIMINAS/COSIPA. Then we applied the result to the total COM reported by the affiliated resellers to attain the resellers variable COM. We used the revised VCOMs to determine the adjustment to normal value related to the physical differences in merchandise.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. The Department considers a ''fluctuation'' to exist when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (An exception to this rule is described below.) Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement occurs when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar.

Our preliminary analysis of dollar-real exchange rates show that the real declined rapidly in early 1999, losing over 40 percent of its value in January 1999, when the Brazilian government ended its exchange rate restrictions. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-real exchange rate during recent years, and it did not rebound significantly in a short time. As such, we preliminarily determine that the decline in the real during January 1999 was of such magnitude that the dollar-real exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.*, as having experienced only a

momentary drop in value relative to the normal benchmark. We preliminarily find that there was a large, precipitous drop in the value of the real in relation to the U.S. dollar in January 1999.

We recognize that, following a large and precipitous decline in the value of a currency, a period may exist wherein it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop in January 1999. Thus, we devised a methodology for identifying the point following a precipitous drop at which it is reasonable to presume that rates were merely fluctuating. Beginning on January 13, 1999, we used only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely ''fluctuating.'' (Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time.) Accordingly, from the first of these five days, we resumed classifying daily rates as ''fluctuating'' or ''normal'' in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand, 64 FR 56759, 56763, October 21, 1999.

Applying this methodology in the instant case, we used daily rates from January 13, 1999 through March 4, 1999. We then resumed the use of our normal methodology through the end of the period of investigation (March 31, 1999), starting with a benchmark based on the average of the 20 reported daily rates on March 5, 1999.

Critical Circumstances

On June 10, 1999, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of cold-rolled steel from Brazil. In accordance with 19 CFR 351.206(c)(2)(i), since this allegation was filed at least 20 days prior to the preliminary determination, the Department must issue its preliminary critical circumstances determination no later than the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Moreover, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department may look to the preliminary injury determination of the ITC.

History of Dumping or Importer Knowledge

To determine whether there is a history of dumping of the subject merchandise, the Department normally considers evidence of an existing antidumping duty order in the United States or elsewhere to be sufficient. The Department found that Mexico has in force an antidumping duty order on cold-rolled steel from Brazil, and therefore determined that there is a history of dumping and material injury by reason of dumped imports of the subject merchandise. Since we have found a history of dumping causing material injury with respect to Brazil, there is no need to examine importer knowledge.

Massive Imports

In determining whether there are ''massive imports'' over a ''relatively short time period,'' the Department ordinarily basis its analysis on import data for at least three months preceding (the ''base period'') and following (the ''comparison period'') the filing of the petition. Pursuant to 19 CFR 351.206(h)(2), unless the imports in the comparison period have increased by at least 15 percent during the base period, we will not consider the imports to have been ''massive''. In addition, the regulations allow for the adjustment of the base and comparison periods where the availability of the data and the commercial realities of the marketplace so dictate. Additionally, as stated in the Department's regulations, at section 351.206(i), if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time.

In this case petitioners argue that importers, exporters or producers of Brazilian cold-rolled steel had reason to believe that an antidumping proceeding was likely before the filing of the petition. The Department examined whether conditions in the industry and published reports and statements provide a basis for inferring knowledge that a proceeding was likely. We considered other sources of information including press reports in late 1998 regarding rising imports and the likelihood of antidumping action against imports of cold-rolled steel. We find that such press reports, particularly in October and November 1998, are sufficient to establish that by the beginning of November 1998, importers, exporters, or producers knew or should have known that a proceeding was likely concerning cold-rolled products from Brazil. See Preliminary Analysis Memoranda, dated November 1, 1999 (Preliminary Analysis Memoranda). Accordingly, we examined the increase in import volumes from January—October 1998 as compared to November 1998–August 1999, the maximum period for which we had reliable data in this case, and found that company-specific export shipment data shows an increase of more than 100 percent in exports from USIMINAS/COSIPA and a decrease in exports from CSN. See Preliminary Analysis Memoranda. Therefore, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we preliminarily determine that there have been massive imports of cold-rolled steel from USIMINAS/COSIPA over a relatively short period of time.

We have also analyzed the issue of critical circumstances for companies in the ''all others'' category. Our conclusions regarding the history of dumping with respect to any such companies are identical to our conclusions on this issue for the individually examined respondents. Similarly, we conclude, for the reasons stated above, that such importers knew or should have known that a proceeding was likely as of November 1999. With regard to the issue of massive imports, in accordance with our current practice (See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24335 (May 6, 1999)), we first

considered the import data of the mandatory respondents. In this case, we found massive imports for one respondent, based on an increase in imports of more than 100 percent, but not massive imports for the other. We also considered whether U.S. customs data would permit the Department to analyze imports of subject merchandise. However, that data includes products not subject to this investigation. Therefore, it is not appropriate to base our critical circumstances determination on that data. (See Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, 30728 (June 8, 1999)). Under these circumstances, while we normally do not consider the relative volumes of imports from respondents, we considered that the respondent with massive imports accounts for a larger volume of imports than the respondent that did not have the massive imports. Based on these facts, we find that there were massive imports from the uninvestigated companies. Thus we preliminarily find critical circumstances with respect to companies in the ''all others'' category.

Accordingly, we preliminary determine that critical circumstances exist for USIMINAS/COSIPA and for companies in the ''all others category'' but not for CSN.

Verification

In accordance with section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cold-rolled steel products from Brazil that are entered, or withdrawn from warehouse, for consumption: (1) For CSN, on or after the date of publication of this notice in the **Federal Register**; and (2) for USIMINAS/COSIPA and all others, on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter manufacturer	Weighted-average margin (in percent)
CSN	51.24
USIMINAS/COSIPA	40.65
All Others	42.97

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. The deadline for that ITC determination is the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c). We intend to make our final determination no later than 75 days after the date of issuance of this notice.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: November 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29460 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–810]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

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

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld (Severstal), Maria Dybczak (NISCO), or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0172, (202) 482–5811, and (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Preliminary Determination

We preliminarily determine that cold-rolled flat-rolled carbon-quality steel products (''cold-rolled steel'') from the Russian Federation are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

This investigation was initiated on June 21, 1999. *See Initiation of*

Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, 64 FR 34194 (June 25, 1999). Since the initiation of this investigation the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. From July through October 1999, the Department received responses from a number of parties including importers, respondents, consumers, and petitioners, aimed at clarifying the scope of the investigation. *See Memorandum to Joseph A. Spetrini,* November 1, 1999 (*Scope Memorandum*) for a list of all persons submitting comments and a discussion of all scope comments. There are several scope exclusion requests for products which are currently covered by the scope of this investigation that are still under consideration by the Department. These items are considered to be within the scope for this preliminary determination; however, these requests will be reconsidered for the final determination. *See Scope Memorandum*.

On June 21, 1999, the Department requested comments from petitioners and respondents regarding the criteria to be used for model matching purposes. Petitioners, as well as numerous respondents in many of the concurrent cold-rolled steel investigations, submitted comments on proposed model matching criteria on June 28, 1999.

On June 22, 1999, the Department issued Section A of its antidumping questionnaire to the Embassy of the Russian Federation, as well as courtesy copies to the following possible producers/exporters of subject merchandise: AmurSteel, Novo Lipetsk Met Kombinat (''NISCO''), Magnitogorskiy Kalibrovochniy Zavod (''MKZ''), Magnitogorskiy Metallurgischeskiy Kombinat (''MMK''), Mechel, Novosibprokat Joint-Stock Co., JSC Severstal (''Severstal''), St. Petersburg Steel Rolling Mill, and Volgograd Steel Works (''Red October'').

On July 1 and July 13, 1999, we received section A questionnaire responses from Severstal and NISCO. On July 2, 1999, MMK submitted a letter stating that it would not participate in the Department's investigation. On July 9, 1999, the Department issued sections C and D of its antidumping questionnaire to Severstal and NISCO, the only Russian producers to fully respond to the Department's section A questionnaire.

On July 16, 1999, the United States International Trade Commission (''the ITC'') made a preliminary finding of threat of material injury with respect to subject imports from the Russian Federation.

On July 20, 1999, the Department received a fax from MKZ stating that it could not produce and did not export subject merchandise into the United States. On July 28, 1999, the Department issued a letter to both NISCO and the Ministry of Trade of the Russian Federation requesting that the company resubmit its July 1 and 19, 1999 responses to section A of the questionnaire in a manner conforming to the Department's instructions. On July 29, 1999, in response to NISCO's request, we issued an additional letter detailing those interested parties to whom NISCO was required to serve. On July 30, 1999, in response to a fax from NISCO, we issued a third letter instructing the company with regard to re-submission of its response to section A of the questionnaire. NISCO resubmitted its questionnaire response to section A on August 9, 1999. In addition, on August 11, 1999, NISCO submitted a statement requesting and explaining why certain information should be treated as business proprietary information.

Petitioners filed comments on Severstal's and NISCO's section A questionnaire responses on August 3, 11, 12 and 19, 1999. We issued supplemental questionnaires for section A to Severstal and NISCO on August 24, 1999, and received NISCO's and Severstal's responses on September 13 and 14, 1999, respectively. On August 30, 1999, we received responses to sections C and D of the questionnaire from Severstal and NISCO. Petitioners filed comments on Severstal's and NISCO's section C and D questionnaire responses on September 7, 8, 9 and 10, 1999. We issued supplemental questionnaires for sections C and D to NISCO and Severstal on September 10, 1999, and received responses to these supplemental questionnaires on September 29 and October 4, 1999, respectively. We received additional comments from petitioners on NISCO's section C and D supplemental questionnaire responses on October 8, 1999. On October 11, 1999, NISCO provided updated usage factor information. Although this information has been filed too close to the date of our preliminary determination to allow the Department to fully review this additional submission, we will consider this information for the final determination. On October 12, 1999, we issued an additional supplemental questionnaire to both Severstal and NISCO. On October 27, 1999, NISCO submitted its response to the additional supplemental questionnaire. On the same date, petitioners submitted comments on NISCO's submission. Because NISCO's supplemental was submitted too close to the date of this determination, the Department will not consider NISCO's response for the purposes of this preliminary determination; however, the Department will consider, if appropriate, NISCO's supplemental submission for the final determination.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1)

iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and
  (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or
  (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:
  Thickness: 0.001 to 0.010 inches
  Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
  Thickness: ≤1.0 mm
  Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≤162 Kgf/mm^2
Hardness	≤475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area Percentage
Sulfide Inclusion	≤0.04
Oxide Inclusion	≤0.05

Compressive Stress: 10 to 40 Kgf/mm^2.

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t ≤ 0.209	Rz ≤ 0.5
0.209 < t ≤ 0.310	Rz ≤ 0.6
0.310 < t ≤ 0.440	Rz ≤ 0.7
0.440 < t ≤ 0.560	Rz ≤ 0.8

SURFACE ROUGHNESS—Continued

Thickness (mm)	Roughness (μm)
0.560 < t	Rz ≤1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:
  Thickness: ≤ 0.100 mm +/−7%
  Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

- Certain silicon steel, which meets the following characteristics:
  Thickness: 0.024 inches +/−.0015 inches
  Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

- Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
  Thickness: 0.025 to 0.245 mm
  Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03			—	0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08	—	(Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA microinches (micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03			—	0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

• Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness and size of 0.38 mm × 940 mm × coil, and with a bright finish;

• Certain cold-rolled steel sheet, which meets the following characteristics:

Thickness (nominal): >0.019 inches

Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• Certain band saw steel, which meets the following characteristics:

Thickness: ≤1.31 mm

Width: ≤80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:

Carbide: fully spheroidized having >80% of carbides, which are ≤0.003 mm and uniformly dispersed

Surface finish: bright finish free from pits, scratches, rust, cracks, or seams

Smooth edges

Edge camber (in each 300 mm of length): ≤7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1998 through March 31, 1999.

Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e), the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

NISCO

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department.

Based on NISCO's responses to section D of the Department's questionnaire, we preliminarily find that the company did not report model-specific usage factors consistent with the Department's matching criteria in the original and supplemental questionnaires. NISCO explained that its accounting system, based on product codes, prevented the company from reporting usage factors on the model-specific basis required by the Department. Because the evidence on the record indicates that NISCO's product codes have no relation to separately identifiable models based on the Department's matching criteria, the Department would only be able to use NISCO's usage factors if NISCO had provided sufficient narrative explanation and/or supporting documentation which would allow the Department to adjust the information on the record. However, NISCO failed to provide any narrative explanation or supporting documentation with regard to the methodology used in calculating the reported usage factors in time for the Department to evaluate it for this preliminary determination. Without information regarding how these usage factors were calculated, we were unable to determine how to adjust the reported usage factors to conform to the Department's requirement that reported usage factors which reflect unique, model-specific factors of production. Therefore, we find that the application of facts available for NISCO's dumping margin is appropriate for the preliminary determination because: (1) NISCO has not reported model-specific usage factors, resulting in usage factors which are not accurate reflections of the models to which they relate; and (2) NISCO has failed to provide information regarding its methodology for calculating and reporting its usage factors. As a result, the normal values calculated from NISCO's reported usage factors cannot serve as a reliable basis for reaching a preliminary determination (*see* section 782(e)(3) of the Act) and we have instead relied on facts available for the purpose of assigning a dumping margin to NISCO for this preliminary determination.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)(SAA). As noted in the case history, NISCO, a pro se company, has submitted responses to the questionnaires issued by the Department, including detailed responses to sections A (general information) and C (U.S. sales information), and has sought guidance from the Department relating to various aspects of this investigation (*see* ''Case History'' section above). In addition, as we noted above, NISCO has stated for the record that the company's accounting system does not record production expenses based on the Department's model-match criteria, but instead records factors of production on a much broader basis. Therefore, we preliminarily find that the evidence on the record at this time is not sufficient to conclude that NISCO has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information and, therefore, the application of adverse facts available under section 776(b) of the Act is not warranted.

Because there is a single calculated margin obtained in the course of this investigation, that of respondent Severstal, we have assigned Severstal's rate of 177.59 percent to NISCO as the facts available rate. We note that, due to our reliance on a calculated margin as facts available for NISCO, the corroboration requirement of section 776(c) of the Act does not apply.

Severstal

We have applied partial facts available with regard to two factors of production reported by Severstal. First, Severstal did not provide a detailed listing of usage rates for the factor of production it termed ''recycled materials.'' Because Severstal did not report specific usage factors for each of its ''recycled materials,'' the Department is unable to value these materials precisely. Thus, for purposes of this preliminary determination, we have valued recycled materials using steel scrap because scrap is the most prevalent item in Severstal's description of recycled materials (*see*, Exhibit D–16 of Severstal's October 4, 1999 submission).

Additionally, in its supplemental questionnaire response, Severstal reported for the first time ''additional materials'' as an input, but provided no narrative description of this input and did not identify the unit of measure in which this input has been reported. In order to value these ''additional

materials,'' as facts available, we have calculated and applied a weighted-average of the values for all other reported inputs which are added at the same stage of the production process as these ''additional materials,'' and made an adjustment for units of measure. For a further discussion of issues involving additional and recycled materials, *see* the ''Factor Valuations'' section, below.

For these two factors, we have applied a non-adverse assumption in calculating a surrogate value because, at this time, it does not appear that Severstal did not act to the best of its ability in responding to the Department's questionnaire. Severstal has developed an alternative methodology for reporting its factors of production in this investigation compared to the methodology it employed in previous antidumping investigations (*i.e*, the hot-rolled and cut-to-length plate investigations). Severstal has described this process as very time-consuming during meetings with the Department regarding the development of this new methodology. On this basis, we preliminarily find that the statutory requirements for making adverse inferences do not apply with regard to Severstal's reporting of these factors of production.

The Russia-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of certain cold-rolled steel from the Russian Federation is greater than the total quantity and value of cold-rolled steel reported by all Russian companies that submitted responses. Given this discrepancy, we conclude that not all exporters of Russian cold-rolled steel responded to our questionnaire. Moreover, on July 2, 1999, MMK submitted a letter to the Department, via fax, stating that it would not participate in the initiated antidumping investigation on cold-rolled steel. *See Memorandum to the File: Re: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation: Response of Magnitogorsk Iron & Steel Works*, dated July 6, 1999. Accordingly, we are applying a single antidumping duty deposit rate—the Russia-wide rate—to all exporters in the Russian Federation, other than those specifically identified below under ''Suspension of Liquidation,'' based on our presumption that those respondents who failed to respond constitute a single enterprise and are under common control by the Russian Federation government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996).

This Russia-wide antidumping rate is based on the facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available.

As discussed above, all Russian exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. In such situations, the Department generally selects as total adverse facts available the higher of the highest margin from the petition or the highest rate calculated for a respondent in the proceeding. In the present case, there is only one calculated margin (which is the highest margin on the record). Therefore, although the single enterprise is deserving of the assignment of a margin based on an adverse inference, we find that the current information on the record does not provide a sufficient basis for drawing an adverse inference. Accordingly, the Department has based the Russia-wide rate on the only calculated margin, which is the highest margin in the investigation, and, therefore, for the preliminary determination, the Russia-wide rate is 177.59 percent. For the final determination, the Department will consider all margins on the record at that time for the purpose of determining the most appropriate margin based on adverse facts available.

Date of Sale

For its U.S. sales, Severstal reported the date of order specification as the date of sale. As stated in 19 CFR 351.401(i), the Department will use as the date of sale that date which best reflects the date on which the exporter or producer establishes the material terms of sale. Severstal has stated that the material terms of sale, namely price, quantity and product characteristics, are set on the order specification date and, therefore, it is the most appropriate date to use as date of sale. The Department is using the date of sale for U.S. sales as reported by respondent Severstal for this preliminary determination. We intend to examine fully this issue at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination.

Nonmarket Economy Country Status

The Department has treated the Russian Federation as a nonmarket economy (''NME'') country in all past antidumping investigations and administrative reviews (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (January 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (November 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (March 30, 1995). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). The Department is continuing to treat the Russian Federation as an NME for this preliminary determination. The respondents have not sought revocation of NME status in this investigation.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c) of the Act provides for the Department to base normal value (''NV'') on the NME producers' factors of production, valued in a surrogate market economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing the factors of production, utilizes, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are comparable in terms of economic development to the NME country and are significant producers of comparable merchandise. The sources

of individual factor values are discussed in the NV section below.

The Department has determined that Tunisia, Colombia, Poland, Venezuela, South Africa, and Turkey are countries comparable to the Russian Federation in terms of overall economic development. *See Memorandum to Rick Johnson, Program Manager, from Jeff May, Director, Office of Policy; Re: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation: Nonmarket Economy Status and Surrogate Country Selection* (''*Policy Memorandum*''), dated June 24, 1999. Additionally, the Department has determined that Turkey, Poland, South Africa, and Venezuela are significant producers of cold-rolled steel products. *See Memorandum to the File; Re: Selection of a Surrogate Country*, dated November 1, 1999. As noted in the *Policy Memorandum*, in the event that more than one country satisfies both statutory requirements, the Department should narrow the field to a single country on the basis of data availability and quality. *See also Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the Peoples Republic of China*, 59 FR 55625 (November 8, 1994). Based on the information on the record, we have preliminarily determined that Turkey is an appropriate surrogate because it is at a comparable level of economic development and is a significant producer of comparable merchandise. Furthermore, there is a wide array of publicly available information for Turkey. Accordingly, we have calculated NV using Turkish prices to value Severstal's factors of production, when available and appropriate. We have obtained and relied upon public information wherever possible. For a further discussion of the Department's selection of Turkey as the primary surrogate, *see Memorandum to the File; Re: Selection of a Surrogate Country*, dated November 1, 1999.

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for a final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

Separate Rates

The Department presumes that a single dumping margin is appropriate for all exporters in an NME country. *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). The Department may, however, consider requests for a separate rate from individual exporters. Severstal and NISCO have each requested a separate, company-specific rate. To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in NME cases only if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities. For a complete analysis of separate rates, *see Memorandum to Edward C. Yang, Re: Separate Rates for Exporters that Submitted Questionnaire Responses* (''*Separate Rates Memo*''), dated November 1, 1999.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Respondents have placed on the administrative record a number of documents to demonstrate absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the central government of the Russian Federation, describing the deregulation of Russian enterprises as well as the deregulation of the Russian export trade, except for a list of products that may be subject to central government export constraints. Respondents claim that the subject merchandise is not on this list. This information provides a sufficient basis for a preliminary finding that there is an absence of *de jure* government control. *See Separate Rates Memo*, dated November 1, 1999.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) whether the export prices (''EP'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. Both responding companies have reported that they are publicly-owned. In no case is there aggregate government ownership greater than 25 percent.

Severstal has stated that its prices are negotiated with its customers and are not subject to review by or guidance from any government organization. Additionally, Severstal notes that the independence of private parties, such as Severstal, to negotiate prices is guaranteed by Russian legislation (Article 424 of the Civil Code). There is no evidence on the record to suggest that there is any government involvement in the determination of sales prices.

Severstal stated that it can retain all export earnings, and that there are no restrictions on the use of the company's export revenues, other than certain currency controls (*see* below), and that Severstal alone decides how profits will be utilized. Severstal further reports that its Board of Directors is elected by the general meeting of the shareholders, which also elects the general director of the company. Severstal also stated that it does not need to notify the government of the identity of its management.

Regarding currency controls, Severstal and NISCO explained that under Russian law, prior to March 15, 1999, they were required to convert fifty percent of their foreign currency earnings into rubles at the market-denominated exchange rate in effect on the date of exchange. *See* Instruction of the Russian Federation Central Bank No. 7, ''On the Procedure for the Mandatory Sale by Enterprises, Conglomerates, and Organizations of a Portion of the Foreign Exchange Revenue through Authorized Banks and on the Execution of Transactions in the Russian Federation Exchange Market'' (June 29, 1992); Partial Alteration of Procedure Governing Mandatory Sale of Part of ''Foreign Currency Earning and Collection of Export Duties, Russian Federation President's Edict No. 629 (June 14, 1992); and Law of the Russian Federation No. 3615–1 of October 9, 1992 on Hard Currency Regulation and Control, included in Exhibit A–11 of

Severstal's July 20, 1999 section A response. In addition, we note that Russian Federation Presidential Decree dated March 15, 1999 ''On Changes in Mandatory Sale of Part of Currency Revenue'' modified the conversion percentage to 75 percent. There is no evidence of any further restrictions on the use of Severstal's and/or NISCO's proceeds.

With regard to NISCO, there is no evidence on the record to suggest that there is any government involvement in the determination of sales prices. As the information concerning NISCO's sales process is proprietary, for a further discussion of this issue, *see Separate Rates Memo* (proprietary version).

In addition, NISCO stated that there are no restrictions on the usage of export revenues, except for the certain currency controls discussed above. Also, NISCO explained that it calculates its export profits as the difference between the sales proceeds and the total costs of the products sold. NISCO also stated that its Board of Directors decides how the profits will be used and that there is no government involvement in these decisions. NISCO further reports that the chairman of the board of directors is elected from among the board by vote of the board members, the members of the Board are elected by vote at the annual shareholders' meeting for a term of one year, and the director general is also elected by vote at the annual shareholders' meeting for a term of one year. NISCO stated that it is not required to notify any governmental authorities of the identity of its managers.

In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies. Consequently, we preliminarily determine that Severstal and NISCO meet the criteria for application of separate rates. For a further discussion of this issue, *see Separate Rates Memo.*

Fair Value Comparisons

To determine whether cold-rolled steel products from the Russian Federation sold to the United States by Severstal were made at less than fair value, we compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For Severstal, we preliminarily calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and constructed export price (''CEP'') methodology was not otherwise indicated. We will examine the EP/CEP designation further at verification. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NV based on factors of production.

We calculated EP based on either packed FOB prices or FCA prices to unaffiliated trading companies. When appropriate, for FOB sales, we made deductions from the starting price for brokerage and handling. These services were assigned a surrogate value based on public information from *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*. *See Memorandum to Edward C. Yang; Re: Factor Valuation for Severstal (''Factor Valuation Memo''),* dated November 1, 1999. We also made adjustments for foreign inland freight, which was valued using Polish transportation rates, since public information on Turkish values was unavailable. Because the mode of transportation reported by Severstal is proprietary, for a further discussion, *see Factor Valuation Memo* (proprietary version).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. We calculated NV based on factors of production reported by Severstal with the following exceptions: industrial steam, water, and packing materials. For further discussions of these exceptions, *see Factor Valuation Memo,* and *Memorandum to the File, Re: Margin Calculation for the Preliminary Determination for JSC Severstal (Severstal),* dated November 1, 1999. We valued all the input factors using publicly available published information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. When possible, we valued material inputs on the basis of tax-exclusive domestic prices in the surrogate country. When we were not able to rely on domestic prices, we used import prices to value factors. As appropriate, we adjusted import prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using producer or wholesale price indices, as appropriate, published in the International Monetary Fund's International Financial Statistics.

To value coal, iron ore concentrate, iron ore pellets, limestone, ferroalloys, scrap, kerosene, coal tar, and solid by-products, we used public information published by the United Nations Trade Commodity Statistics for 1997 (''UNTCS''). Severstal did not provide information regarding iron content for iron ore pellets. For the preliminary determination, we have valued iron ore pellets based on the 1997 UNTCS Turkish value for HTS 260112, which represents iron ore pellets with a low iron content. We have based our valuation on evidence from *The Making, Shaping and Treating of Steel* that indicates low iron content iron ore pellets are used in blast furnaces. *See Factor Valuation Memo,* Attachment 5. We have inquired as to iron content in a supplemental questionnaire and intend to fully review actual iron ore content at verification. Charge by-products were valued at the same rate as coal.

We have valued certain of the energy inputs and non-solid by-products at their natural gas equivalents (natural gas, oxygen, blast furnace gas, coke oven gas, nitrogen, residual fuel oil, argon, and benzoil) based on public information from ''Energy Prices and Taxes: 1st Quarter 1999,'' published by the International Energy Agency, OECD.

For electricity, we based the dollar per kWh on the average of 4th quarter 1998 and 1st quarter 1999 prices. These prices were taken from Table 20 (''Electricity Prices for Households in U.S. Dollars/kWh'') of *Energy Prices and Taxes: First Quarter 1999,* International Energy Agency, OECD.

Because we were unable to obtain publicly available Turkish values, we used Polish transport information to value transport for raw materials. Since the mode of transportation reported by Severstal is proprietary, for a full discussion of this issue, *see Factor Valuation Memo* (proprietary version).

For labor, we used the Russian regression-based wage rate at Import Administration's homepage, Import Library, Expected Wages of Selected NME Countries, revised in May 1999. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations provides for the use of a regression-based wage rate. The source of this wage rate data on the Import Administration's homepage is found in the *1998 Year Book of Labour Statistics*, International Labour Office (''ILO''), (Geneva: 1998), Chapter 5: Wages in Manufacturing.

To value overhead, general expenses and profit, we used public information reported in the 1998 financial statements of Eregli Demir ve Celik Fabrikalari TAS (''Erdemir''), a Turkish steel producer. We adjusted Erdemir's depreciation expenses for the effects of high inflation, and we reduced its financial expenses for estimated short-term interest income and we excluded estimated long-term foreign exchange losses. We carried through the financial expense changes to the profit rate calculations. For a further discussion of this issue, *see* Attachment 5 of the *Factor Valuation Memo.*

As stated above in the ''Facts Available'' section of this notice, there were several factors of production for which we did not have complete information. With regard to ''recycled materials,'' we have valued recycled materials using steel scrap because in Severstal's description of recycled materials, scrap is the most prevalent item (*see,* Exhibit D–16 of Severstal's October, 4, 1999 submission). For ''additional materials,'' we have calculated and applied a weighted-average of the values for all other reported inputs which are added at the same stage of the production process as these ''additional materials.'' In addition, we made the assumption, based on information contained in Exhibit D–4 of Severstal's October 4, 1999 supplemental response, that this factor was reported on a unit of measure other than a metric ton basis. We have made an adjustment to the unit of measure accordingly. *See Analysis Memo: Severstal,* dated November 1, 1999.

Finally, Severstal reported a large number of different types of packing materials. However, because the record does not contain surrogate values for these materials, and because we have not been able to otherwise locate surrogate values for these materials, we have used the ratio of packing materials to total cost of production based on public information from *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Turkey.* For a further discussion, *see Factor Valuation Memo* (proprietary version).

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
JSC Severstal	177.59
Novolipetsk Iron & Steel Corp	177.59
Russia-Wide	177.59

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of cold-rolled steel from the Russian Federation are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See 19 CFR 351.310(c).*

If this investigation proceeds normally, we will make our final determination no later than January 15, 2000.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: November 1, 1999.

Robert S. LaRussa,

Assistant Secretary, for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–807]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From South Africa

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

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0165.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 CFR Part 351 (1998).

Preliminary Determination

We preliminarily determine that certain cold-rolled flat-rolled carbon-quality steel products (''cold-rolled steel products'') from South Africa are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (*see Notice of Initiation of Antidumping Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela*, 64 FR 34194 (June 25, 1999) (''*Initiation Notice*'')), the following events have occurred:

On June 21, 1998, the Department invited interested parties to submit comments regarding model matching. On June 28, 1999, Bethlehem Steel Corporation, Gulf States Steel, Ispat Inland Steel, LTV Steel Company Inc., National Steel Corporation, Steel Dynamics, U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and United Steelworkers of America, (collectively, ''petitioners''), stated that we should revise the category ''annealing'' to account more precisely for important differences in processing, pricing, functions, and customer expectations. In addition, petitioners recommended that the Department include an additional category under ''Quality,'' for motor lamination steels.

In their petition, petitioners identified Iscor Limited (''Iscor'') as a possible producer and exporter of cold-rolled steel from South Africa. On June 22, 1999, the Department issued the Section A antidumping questionnaire to Iscor, the only known South African exporter of subject merchandise. On July 9, 1999, the Department issued the Section B, C, D, and E antidumping questionnaire to Iscor. Iscor did not respond to the Department's antidumping questionnaire (*see* ''Facts Available'' section below).

On July 16, 1999, the United States International Trade Commission (''the ITC'') preliminarily determined that there is a reasonable indication that imports of the products under this investigation are materially injuring the United States industry.

The Department set aside a period for all interested parties to raise issues regarding product coverage. From July through October 1999, the Department received responses from a number of parties including importers, respondents, consumers, and petitioners, aimed at clarifying the scope of the investigation. *See Memorandum to Joseph A. Spetrini,* November 1, 1999 (''*Scope Memorandum*'') for a list of all persons submitting comments and a discussion of all scope comments. There are several scope exclusion requests for products which are currently covered by the scope of this investigation that are still under consideration by the Department. These items are considered to be within the scope for this preliminary determination; however, these requests will be reconsidered for the final determination. *See Scope Memorandum.*

Period of Investigation

The period of investigation is April 1, 1998 through March 31, 1999.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);

- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and
  (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or
  (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inches
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≧162 Kgf/mm²
Hardness	≧475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤0.04%
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm².

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:

Thickness: ≤0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm²

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	< 0.01 mm greater than thickness
Coil Set (in 1.0 m)	< 75.0 mm

- Certain silicon steel, which meets the following characteristics:
  Thickness: 0.024 inches ±.0015 inches
  Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

- Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
  Thickness: 0.025 to 0.245 mm
  Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	< 0.01	0.004 to 0.007	< 0.007

- Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

- Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

- Certain ''blued steel'' coil (also known as ''steamed blue steel'' or ''blue oxide'') with a thickness and size of 0.38 mm × 940 mm × coil, and with a bright finish;
- Certain cold-rolled steel sheet, which meets the following characteristics:
  Thickness (nominal): ≤ 0.019 inches
  Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

- Certain band saw steel, which meets the following characteristics:
  Thickness: ≤ 1.31 mm
  Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight	%1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤ 0.007	0.3 to 0.5	≤ 0.25

Other properties:
Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. In accordance with sections 776(a)(2)(A) and (C), because Iscor failed to respond to our questionnaire and significantly impeded the investigation, and because the relevant subsections of section 782 of the Act therefore do not apply, we must use facts otherwise available to determine the dumping margin for Iscor.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* also ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No.

103–316, 870 (1994) (''SAA''). Based on Iscor's failure to respond to the Department's antidumping questionnaire, we have determined that Iscor has not acted to the best of its ability to comply with the Department's information requests. Therefore, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As facts available, the Department has applied a margin of 16.65 percent, the only alleged margin in the petition.

Section 776(c) of the Act provides that, when the Department relies on secondary information, such as the petition, as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see Id.*).

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, foreign market research reports, and data from U.S. producers). *See Initiation Checklist: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China (''China''), Indonesia, Japan, the Russian Federation (''Russia''), Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela* (June 21, 1999), which is on file in the Central Records Unit (''CRU'') of the Main Commerce Department Building. In order to determine the probative value of the petition margin for use as adverse facts available in this preliminary determination, we have re-examined evidence supporting the petition calculation. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value calculations on which the petition margin was based and found that the information has probative value (*see* the October 19, 1999 memorandum to the file regarding Facts Available Corroboration, which is on file in the CRU of the Main Commerce Department building).

The All-Others Rate

All foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5)(B) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including weight-averaging the facts available margins. In this case, the margin assigned to the only company investigated is based on adverse facts available. Therefore, consistent with the statute and the SAA at 873, we are using an alternative method. As our alternative, we are basing the all-others rate on the margin alleged in the petition. As a result, the all-others rate is 16.65 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Iscor	16.65
All Others	16.65

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c). If this investigation proceeds normally, we will make our final determination within 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: November 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29459 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–811]

Steel Wire Rope From the Republic of Korea: Extension of Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: James Kemp, at (202) 482–1276, or Steven Presing, at (202) 482–5288, Office of AD/CVD Enforcement V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On April 30, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on Steel Wire Rope from the Republic of Korea, covering the period March 1, 1998 through February 28, 1999 (64 FR 23269). The preliminary results are currently due no later than December 1, 1999.

Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than March 30, 2000. *See* Decision Memorandum from Bernard T. Carreau to Robert S. LaRussa, dated November 1, 1999, which is on file in the Central Records Unit. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 4, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 99–29463 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Pipes and Tubes From Turkey: Extension of Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of extension of time limit for preliminary results of countervailing duty administrative review.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Grossman at (202) 482–2786, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On April 30, 1999, the Department published a notice of initiation of administrative review of the countervailing duty order on certain welded carbon steel pipes and tubes from Turkey, covering the period January 1, 1998 through December 31, 1998 (64 FR 23269). The preliminary results are currently due no later than December 1, 1999.

Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limits for completion of the preliminary results until no later than March 30, 2000. *See* Decision Memorandum from Bernard Carreau to Robert S. LaRussa, dated October 28, 1999, which is on file in the Central Records Unit. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 28, 1999.

Bernard Carreau,

Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 99–29462 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, Application No. 87–14A04.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted originally to The Association for Manufacturing Technology (''AMT'') on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, 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. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing

Title III are found at 15 CFR part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 87–00004, was issued to The Association for Manufacturing Technology on May 19, 1987 (52 FR 19371, May 22, 1987) and previously amended on December 11, 1987 (52 FR 48454, December 22, 1987); January 3, 1989 (54 FR 837, January 10, 1989); April 20, 1989 (54 FR 19427, May 5, 1989); May 31, 1989 (54 FR 24931, June 12, 1989); May 29, 1990 (55 FR 23576, June 11, 1990); June 7, 1991 (56 FR 28140, June 19, 1991); November 27, 1991 (56 FR 63932, December 6, 1991); July 20, 1992 (57 FR 33319, July 28, 1992); May 10, 1994 (59 FR 25614, May 17, 1994); December 1, 1995 (61 FR 13152, March 26, 1996); October 11, 1996 (61 FR 55616, October 28, 1996) May 6, 1998 (63 FR 31738, June 10, 1998); and November 10, 1998 (63 FR 63909, November 17, 1998).

AMT's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Ex-Cell-O Machine Tools, Inc., Sterling Heights, MI; HYD–MECH Inc., Pueblo, CO; Freyer Machine Systems, Paterson, NJ; Denford Machine Tools USA, Inc., Medina, OH; and Flow International Corporation, Kent, WA;

2. Delete The Dunham Tool Company, Inc.; Excel/Control; Goldcrown Machinery; Hypneumat Inc.; The J.L. Wickham Co., Inc.; Oliver Machinery Co.; Perfecto Industries, Inc.; Lynn Electronics Corporation; Nacto/Carlton L.P.; Durant Tool Company; and Williams, White & Co. as ''Members'' of the Certificate; and

3. Change the listing of the company name for the current ''Members'' cited in this paragraph to the new listing cited in parentheses as follows: Saginaw Machine Systems, Inc. (SMS Group Incorporated); and Cincinnati Milacron (Milacron, Inc.).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: October 29, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–29361 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–DR–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 (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, 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. An Export Trade 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 Export Trading Company Act of 1982 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 DC 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 90–7A007.''

The United States Surimi Commission (''USSC'') original Certificate was issued on August 22, 1990 (55 FR 35445, August 30, 1990), and lastly amended on August 3, 1995 (60 FR 41879, August 14, 1995). A summary of the application for an amendment follows.

Summary of the Application

Applicant: The United States Surimi Commission (''USSC''), c/o Mundt MacGregor L.L.P., 999 Third Avenue, Suite 4200, Seattle, WA 98104–4082, Attention: Mr. Paul MacGregor.

Contact: Paul MacGregor, Telephone: (206) 624–5950.

Application No.: 90–7A007

Date Deemed Submitted: November 1, 1999.

Proposed Amendment: USSC seeks to amend its Certificate to add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Highland Light Seafoods, LLC, Seattle, WA (Controlling Entity: Highland Light, Inc., Seattle, WA) and The Starbound Limited Partnership, Seattle, WA (Controlling Entity: Aleutian Spray Fisheries, Inc., Seattle, WA).

Dated: November 4, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–29362 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110199A]

Magnuson-Stevens Act Provisions; Overfished Fisheries

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

ACTION: Notice of overfished fisheries.

SUMMARY: In its annual report to Congress on the status of marine fish stocks, NMFS has identified 98 overfished stocks and 5 stocks that are approaching a condition of being overfished, while 127 species are not overfished and the condition of another 674 species is not known. The report is prepared to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson- Stevens Act), as amended by the Sustainable Fisheries Act (SFA). The purpose of this document is to notify the public that the Regional Fishery Management Councils (Councils) or the Secretary of Commerce with respect to Atlantic highly migratory species have been informed of those fisheries that are overfished, and that they are required under the Magnuson-Stevens Act to initiate action to end overfishing, rebuild stocks in overfished fisheries, and prevent overfishing in fisheries that are approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, NMFS, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

This action is required by the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) as amended by the SFA, which was signed into law on October 11, 1996. Section 304(e) of the Magnuson-Stevens Act requires that the Secretary of Commerce (Secretary) report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a Fishery Management Plan (FMP) or international agreement, the status is to be determined using the criteria for overfishing specified in such FMP or agreement. A fishery is classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within 2 years. Pursuant to section 304 of the Magnuson-Stevens Act, the Councils, and the Secretary for Atlantic highly migratory species, were notified on October 29, 1999, of the species that were overfished or approaching an overfished condition.

The 1999 report finds that a total of 98 species are ''overfished,'' 127 species are classified as ''not overfished,'' 5 species are ''approaching an overfished condition,'' and for 674 species the status is ''unknown.'' Conservation efforts and/or updated data on some fisheries allowed managers to remove 10 species from the overfished list while adding 18 new species. Six species that had been ''approaching an overfished condition'' were removed from that list, but 1 new species was added to this year's report. In addition, a lack of information to satisfy the more complex overfishing definition required under the SFA caused 79 species to be moved from the ''not overfished'' category to the ''unknown'' designation. The new statutory definition requires that status determination criteria must specify both a maximum fishing mortality or reasonable proxy, and a minimum stock size threshold or reasonable proxy.

A copy of the report is also available through the internet at <<http://kingfish.ssp.NMFS.gov/SFA>>.

Dated: November 5, 1999.

Gary C. Matlock,

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

[FR Doc. 99–29480 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I. D.102299C]

Marine Mammals; File No. 962–1530

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that The North Carolina State Museum of Natural Sciences, 102 North Salisbury Street, Raleigh, NC 27063, has applied in due form for a permit to take one blue whale (*Balaenoptera musculus*) skeleton for purposes of scientific research and educational display.

DATES: Written or telefaxed comments must be received on or before December 10, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301–713–2289);

Regional Administrator, Southeast Region, NMFS,9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–570–5301)

Regional Administrator, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930 (978–281–9250)

FOR FURTHER INFORMATION CONTACT: Thomas McIntyre, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant seeks a scientific research permit to import the skeleton of a blue whale recovered from an animal which stranded in the waters of the Gulf of St Lawrence, Canada in 1978. The specimen will be accessioned and cataloged in the research collections of the North Carolina State Museum. The specimen will be prepared for exhibit in the Museum. The NC State Museum of natural Sciences is a public institution funded by the State of North Carolina offering programs for education and public display.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no

later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 2, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–29358 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Korea

November 4, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 56005, published on October 20, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 10, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Group I	
200–223, 224–V [2], 224–O [3], 225, 226, 227, 300–326, 360–363, 369pt. [4], 400–414, 464, 469pt. [5], 600–629, 666, 669–P [6], 669pt. [7], and 670–O [8], as a group.	419,050,759 square meters equivalent.
Sublevels within Group II	
336	64,106 dozen.
340	787,481 dozen of which not more than 403,080 dozen shall be in Category 340–D [9].
341	229,644 dozen.
347/348	552,019 dozen.
633/634/635	1,369,098 dozen of which not more than 157,830 dozen shall be in Category 633 and not more than 588,183 dozen shall be in Category 635.
636	305,205 dozen.
638/639	5,498,213 dozen.
640–D [10]	3,128,710 dozen.
641	1,098,572 dozen of which not more than 42,553 dozen shall be in Category 641–Y [11].
647/648	1,395,561 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905, (Category 369–L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[6] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[7] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 670–O: All HTS numbers except only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[10] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[11] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29394 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

November 4, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S.

Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59948, published on November 6, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 10, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Fabric Group	
219, 313–O [2], 314–O [3], 315–O [4], 317–O [5], 326–O [6], 617, 625/626/627/628/629, as a group.	167,093,959 square meters of which not more than 43,680,621 square meters shall be in Category 219; not more than 51,775,602 square meters shall be in Category 313–O; not more than 31,061,775 square meters shall be in Category 314–O; not more than 41,739,262 square meters shall be in Category 315–O; not more than 43,680,621 square meters shall be in Category 317–O; not more than 4,853,401 square meters shall be in Category 326–O, and not more than 29,120,416 square meters shall be in Category 617.
Limits not in a group	
300/301	10,588,966 kilograms.
338/339/638/639	6,448,741 dozen of which not more than 5,710,961 dozen shall be in Categories 338–S/339–S/638–S/639–S [7].
340/640	1,489,429 dozen of which not more than 471,858 dozen shall be in Categories 340–Y/640–Y [8].
351/651	1,167,155 dozen.
352/652	3,052,871 dozen.
361	2,431,329 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[8] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29393 Filed 11–9–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–02]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. this is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the speakaer of the House of Representatives, Transmittal 00–02 with attached transmittal, policy justification, and Section 620C(d) of the Foreign Assistance Act.

Dated: November 4, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 OCT 1999
In reply refer to:
I-99/010106

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-02 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $3.1 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 2.8 billion
Other	$ .3 billion
TOTAL	$ 3.1 billion

(iii) Description of Articles or Services Offered: Seventy F-16C/D Block 50+ aircraft to be configured with either the F100-PW-229 or F110-GE-129 engines, the APG-68(V)7M or APG-68(V)XM FMS radars, 25 LANTIRN navigation and 33 LANTIRN targeting pods; 20 HARM Targeting System (Export); seven F100-PW-229 or F110-GE-129 spare engines, Night Vision Goggle compatible cockpits, conformal fuel tanks, and the Joint Helmet Mounted Cueing System. Associated support equipment, software development/integration, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided.

(iv) Military Department: Air Force (SNW)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 27 OCT 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - F-16C/D 50+ Aircraft

The Government of Greece (GOG) has requested a possible sale of F-16C/D Block 50+ aircraft. All aircraft will be configured with either the F100-PW-229 or F110-GE-129 engines, the APG-68(V)7M or APG-68(V)XM FMS radars, 25 LANTIRN navigation and 33 LANTIRN targeting pods; 20 HARM Targeting System (Export); seven F100-PW-229 or F110-GE-129 spare engines, Night Vision Goggle compatible cockpits, conformal fuel tanks, and the Joint Helmet Mounted Cueing System. Associated support equipment, software development/integration, spares and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability will also be provided. The estimated cost is $3.1 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and enhancing weapon system standardization and interoperability of this important NATO ally.

The GOG has previously purchased and accepted delivery of F-16C/D Block 50 aircraft and LANTIRN pods during FY 98 and FY 99. The proposed sale of the aircraft will fill Greece's requirement for a multi-role aircraft, as articulated in its modernization plan, and be more interoperable with NATO. The aircraft will be provided to Greece in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The prime contractor will be Lockheed Martin Tactical Aircraft Systems, Fort Worth, Texas. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government representatives in-country. It is estimated that approximately two years of contractor technical support will be required in Greece following delivery of the aircraft.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Certification Under § 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (Sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Greece of 70 F-16 C/D Block 50+ aircraft 70, 25 LANTIRN navigation and 33 LANTIRN targeting pods, 20 HARM Targeting Systems, 7 F-100-PW-229 or F-110-GE-129 spare engines, Night Vision Goggle compatible cockpits, conformal fuel tanks, and the Joint Helmet Mounted Cueing System, associated support equipment, software development/integration, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, and USG and contractor technical and logistics personnel services at an estimated cost of $3.1 billion, is consistent with the principles contained in § 620C(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Senior Adviser
for Arms Control and
International Security

[FR Doc. 99–29382 Filed 11–9–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–03]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–03 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 4, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 OCT 1999
In reply refer to:
I-99/010356

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-03, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Denmark for defense articles and services estimated to cost $48 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Denmark**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 46 million
Other	$ 2 million
TOTAL	$ 48 million

(iii) **Description of Articles or Services Offered: Two hundred twenty-five M26A1 Extended Range Rocket pods (six rockets per pod) for the Multiple Launch Rocket System (MLRS), production verification testing, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services and other related elements of program support**

(iv) **Military Department: Army (VJC, Amendment 1)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(vii) **Date Report Delivered to Congress: 27 OCT 1999**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Denmark - Extended Range Rocket Pods for the Multiple Launch Rocket Systems

The Government of Denmark has requested a possible sale of 225 M26A1 Extended Range Rocket pods (six rockets per pod) for the Multiple Launch Rocket System (MLRS), production verification testing, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $48 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Denmark.

The Government of Denmark will use these ERR pods with their MLRS which have already been delivered in FY 99. These EER pods will upgrade Denmark's anti-armor capabilities. Denmark has previously purchased ERR pods and, therefore, will have no difficulty absorbing these additional pods.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Vought Systems, Dallas, Texas. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Denmark.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-03

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The highest level of classified information required to be released for training, operation and maintenance of the Multiple Launch Rocket System (MLRS) Extended Range Rocket (ERR) pods is Confidential. The highest level of information which could be revealed through reverse engineering or testing of the end item is Secret. MLRS-ERR technical data and information includes Confidential and Secret reports and data, as well as performance and capability data, classified Confidential/Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Denmark can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–29383 Filed 11–9–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–04]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notificaiton. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–04 with attached transmittal and policy justification.

Dated: November 4, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 OCT 1999
In reply refer to:
I-99/010773

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-04, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the Netherlands for defense articles and services estimated to cost $275 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: The Netherlands

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 275 million
TOTAL	$ 275 million

(iii) Description of Articles or Services Offered: Logistics support services/equipment for the F-16 aircraft including avionics/computer software support, aircraft engine services/modifications, publications and technical documentation, contractor technical services, spare and repair parts, depot level repair support and other related program elements of support to ensure aircraft operational availability.

(iv) Military Department: Air Force (QBK)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 27 OCT 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Netherlands - Logistics Support for F-16 Aircraft

The Government of the Netherlands has requested a possible sale of logistics support services/equipment for the F-16 aircraft including avionics/computer software support, aircraft engine services/modifications, publications and technical documentation, contractor technical services, spare and repair parts, depot level repair support and other related program elements of support to ensure aircraft operational availability. The estimated cost is $275 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Netherlands and enhancing weapon system standardization and interoperability of this important NATO ally.

The Netherlands needs this logistics support to maintain the operational level of its F-16 squadrons in support of organic and NATO mission commitments. The Netherlands will have no difficulty absorbing these additional logistic support services.

The proposed sale of these support services will not affect the basic military balance in the region.

The contractors expected to participate in this program are United Technologies Corporation, Pratt & Whitney, West Palm Beach, Florida; Lockheed Martin Tactical Aircraft Systems, Fort Worth, Texas; and Northrop Grumman Corporation, Baltimore, Maryland. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one U.S. Government and three contractor representatives in-country for a period of up to five years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 99–29384 Filed 11–9–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–05]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–05 with attached transmittal and policy justification.

Dated: November 4, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 OCT 1999
In reply refer to:
I-99/010775

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-05, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Germany for defense articles and services estimated to cost $138 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-05

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Germany**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$ 138 million
TOTAL	$ 138 million

(iii) **Description of Articles or Services Offered: Base services for the German Air Force Tornado operations at Holloman Air Force Base (AFB), New Mexico will be for training, fuel, munitions, base operating support, and other related operational and logistics requirements.**

(iv) **Military Department: Air Force (NDO)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(vii) **Date Report Delivered to Congress: 27 OCT 1999**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Germany - Tornado Aircraft Training and Logistics Support

The Government of Germany has requested a possible sale of the German Air Force Tornado operations at Holloman Air Force Base (AFB), New Mexico. Services provided will be for training, fuel, munitions, base operating support, and other related operational and logistics requirements. The estimated cost is $138 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Germany and enhancing standardization and interoperability of this important NATO ally.

The Tornado training conducted at Holloman AFB is the only location where the German Air Force trains aircrews in Tornado operations and tactics. The origin of these operations began at U.S. Air Force facilities in 1989.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The U.S. Air Force is the prime contractor for this program. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Germany.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 99–29385 Filed 11–9–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. 00–13]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. this is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–13 with attached transmittal and policy justification.

Dated: November 4, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 OCT 1999
In reply refer to:
I-99/010964

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-13 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Korea for defense articles and services estimated to cost $379 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-13

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 300 million
Other	$ 79 million
TOTAL	$ 379 million

(iii) Description of Articles or Services Offered: Twenty F-16C/D aircraft component kits, spares and repair parts, software development/integration, flight test instrumentation, support equipment, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. Jet engines, to power these aircraft, will be acquired by direct commercial sales and notified in conjunction with a separate 36(c) notification.

(iv) Military Department: Air Force (SIQ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(vii) Date Report Delivered to Congress: 27 OCT 1999

* as defined in Section 47(6) of the Arms Export Control Act.

Transmittal No. 00-13

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 300 million
Other	$ 79 million
TOTAL	$ 379 million

(iii) Description of Articles or Services Offered: Twenty F-16C/D aircraft component kits, spares and repair parts, software development/integration, flight test instrumentation, support equipment, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. Jet engines, to power these aircraft, will be acquired by direct commercial sales and notified in conjunction with a separate 36(c) notification.

(iv) Military Department: Air Force (SIQ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(vii) Date Report Delivered to Congress: 27 OCT 1999

* as defined in Section 47(6) of the Arms Export Control Act.

2a

[FR Doc. 99–29386 Filed 11–9–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–14]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–14 with attached transmittal and policy justification.

Dated: November 4, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 OCT 1999
In reply refer to:
I-99/011004

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-14 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Thailand for defense articles and services estimated to cost $157 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-14

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Thailand

(ii) Total Estimated Value:

Major Defense Equipment*	$ 134 million
Other	$ 23 million
TOTAL	$ 157 million

(iii) Description of Articles or Services Offered: Eighteen F-16A/B Block 15 ADF aircraft including two non-flyable Block 10 OCU aircraft, two Pratt and Whitney F-100-PW-220E spare engines, spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support.

(iv) Military Department: Air Force (SMG, Amendment 7)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(vii) Date Report Delivered to Congress: 27 OCT 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Thailand - F-16A/B Block 15 ADF Aircraft

The Government of Thailand has requested a possible sale of 18 F-16A/B Block 15 ADF aircraft including two non-flyable Block 10 OCU aircraft, two Pratt and Whitney F-100-PW-220E spare engines, spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support. The estimated cost is $157 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Southeast Asia.

Thailand will use these F-16A/B Block 15 ADF aircraft to maintain a continuous air defense capability and upgrade/modernize their current fleet. Thailand, which already has F-16 aircraft in their inventory, will have no difficulty absorbing these additional aircraft.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Lockheed Martin, Fort Worth, Texas and Pratt and Whitney, Palm Beach, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of U.S. Government representatives in-country for two months.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 99–29387 Filed 11–9–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–15]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–15 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 4, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 OCT 1999
In reply refer to:
I-99/011296

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-15, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $508 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-15

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Israel**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 372 million
Other	$ 136 million
TOTAL	$ 508 million

(iii) **Description of Articles or Services Offered: Remanufacture of 24 AH-64A APACHE helicopters to AH-64D model aircraft, 12 AN/APG-78 AH-64D Longbow Fire Control Radar, 12 APR-48A Radar Frequency Interferometer, 56 T-700-GE-701C engines, 24 Target Acquisition Designation Sight/Pilot Night Vision Sensor (TADS/PNVS), 480 AGM-114L3 HELLFIRE II laser guided missiles, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support.**

(iv) **Military Department: Army (YUM)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(vii) **Date Report Delivered to Congress: 27 OCT 1999**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Israel - AH-64A APACHE Helicopters Remanufactured to AH-64D Model Helicopters

The Government of Israel has requested a possible sale for remanufacture of 24 AH-64A APACHE helicopters to AH-64D model aircraft, 12 AN/APG-78 AH-64D Longbow Fire Control Radar, 12 APR-48A Radar Frequency Interferometer, 56 T-700-GE-701C engines, 24 Target Acquisition Designation Sight/Pilot Night Vision Sensor (TADS/PNVS), 480 AGM-114L3 HELLFIRE II laser guided missiles, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $508 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel desires these articles to fulfill their strategic commitments for self-defense, with coalition support, in the region. The proposed sale will upgrade its anti-armor day/night missile capability, provide for the defense of vital installations and provide close air support for the military ground forces. Israel, which already has APACHE helicopters in its inventory, will have no difficulty absorbing these helicopters.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be the Boeing Company, Mesa, Arizona; Lockheed Martin Electronics and Missiles, Orlando, Florida; Lockheed Martin Federal Systems, Owego, New York; General Electric, Lynn, Massachusetts; and Longbow LLC, Orlando, Florida. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-15

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Classified Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AH-64D APACHE Attack Helicopter includes the following classified or sensitive components:

a. AN/APG-78 AH-64D Longbow Fire Control Radar (FCR) is an active fire control radar system providing detection, location, classification and prioritization of targets to be prosecuted by the Longbow HELLFIRE Modular Missile System or handed over to other on-board sensor systems. This enables the APACHE helicopter to detect and fire upon targets in visual conditions which preclude the use of visual or infrared imaging systems. Hardware is Unclassified; releasable technical manuals for operation and organic level maintenance are Unclassified. The AH-64D Longbow critical system information is stored in the FCR in the form of mission source codes, target detection, classification algorithms, and coded threat parametrics; all classified Secret. The data, including operational software, proposed for release will not, in itself, facilitate reverse engineering.

b. The AN/APR-48A Radar Frequency Interferometer (RFI) is part of the AN/APR-78 FCR. It passively detects, locates in azimuth, and identifies radar emitters and sends the emitter identification, and location to either the FCR or to the APACHE Weapons Processor for display to the aircrew. Emitter information can also be used for prioritization. Hardware is classified Secret when the User Data Module (UDM) is attached to the RFI Processor Assembly; Unclassified when the UDM is absent. Releasable technical manuals for operation and organic level maintenance are Unclassified. The data, including operational software, proposed for release will not facilitate reverse engineering.

c. The Target Acquisition and Designation Sight/Pilot Night Vision Sensor (TADS/PNVS) with Optical Improvements (OIP) system provides day, night, limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

d. The AGM-114L3 HELLFIRE missiles with containers, hardware, and documentation are Unclassified. The Longbow HELLFIRE missile guidance section and the guidance algorithms (source codes) contain classified technical data and design information. This design information is classified Secret and the warhead performance is classified Confidential. Sensitive software algorithms are contained within the system, but the L-3 version contains several software security capabilities. Also, the missile source code is not releasable. This protects the sensitive software information from being compromised. The Longbow seeker contains critical components, but the technical data package will not be released.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–29388 Filed 11–9–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Services for Fiscal Year 2000

SUMMARY: Notice is hereby given that on September 30, 1999, the Deputy Chief Financial Officer approved the following reimbursement rates for inpatient and outpatient medical care to be provided in FY 2000. These rates are effective October 1, 1999.

Medical and Dental Services for Fiscal Year 2000

The FY 2000 Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Title 10, United States Code, Section 1095. Due to size, the sections containing the Drug Reimbursement Rates (Section III.E) and the rates for Ancillary Services Requested by Outside Providers (Section III.F) are not included in this package. The Office of the Assistant Secretary of Defense (Health Affairs) will provide these rates upon request (MAJ Rose Layman, OASD(HA)—Response Management/Tri-Care Management Activity, (703) 681–8910 or DSN 761–8910). The medical and dental service rates in this package (including the rates for ancillary services, prescription drugs or other procedures requested by outside providers) are effective October 1, 1999.

Inpatient, Outpatient and Other Rates and Charges

I. Inpatient Rates [1] [2]

Per inpatient day	International Interagency military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
A. Burn Center	$3,080.00	$5,529.00	$5,840.00
B. Surgical Care Services (Cosmetic Surgery)	1,411.00	2,533.00	2,675.00
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG) [3].			

1. FY2000 Direct Care Inpatient Reimbursement Rates

Standard amount	IMET	Interagency	Other (full/third party)
Large Urban	$2,921.00	$5,498.00	$5,775.00
Other Urban/Rural	3,236.00	6,532.00	6,883.00
Overseas	3,606.00	8,520.00	8,941.00

2. Overview

The FY2000 inpatient rates are based on the cost per DRG, which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.C.1., above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. The published ASAs will be adjusted for area wage differences and indirect medical education (IME) for the discharging hospital. An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital in a Large Urban Area.

a. The cost to be recovered is DoD's cost for medical services provided in the non-teaching hospital located in a large urban area. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.3446. (DRG statistics shown are from FY 1998.)

c. The DoD adjusted standardized amount to be charged is $5,775 (i.e., the third party rate as shown in the table).

d. DoD cost to be recovered at a nonteaching hospital with area wage index of 1.0 is the RWP factor (2.3446) in subparagraph 3.b., above, multiplied by the amount ($5,775) in subparagraph 3.c., above.

e. Cost to be recovered is $13,540.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020 ...	Nervous System Infection Except Viral Meningitis	2.3446	8.1	5.7	1	29

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	Applied ASA
Non-teaching Hospital	Large Urban	1.0	1.0	$5,775	$5,775

Patient	Length of stay	Days above threshold	Relative weighted product			TPC Amount***
			Inlier*	Outlier**	Total	
#1	7 days	0	2.3446	0.0000	2.3446	$13,540
#2	21 days	0	2.3446	0.0000	2.3446	13,540
#3	35 days	6	2.3446	0.8144	3.1590	18,243

*DRG Weight
** Outlier calculation = 33 percent of per diem weight × number of outlier days
= .33 (DRG Weight/Geometric Mean LOS) × (Patient LOS − Long Stay Threshold)
= .33 (2.3446/5.7) × (35 − 29)
= .33 (.41133) × 6 (take out to five decimal places)
= .13574 × 6 (carry to five decimal places)
= .8144 (carry to four decimal places)
*** Applied ASA × Total RWP

II. Outpatient Rates[1 2] Per Visit

MEPRS code[4]	Clinical service	International military education & training (IMET)	Interagency and other federal agency sponsored patients	Other (full/third party)
	A. Medical Care			
BAA	Internal Medicine	$104.00	$194.00	$204.00
BAB	Allergy	53.00	99.00	105.00
BAC	Cardiology	87.00	163.00	172.00
BAE	Diabetic	61.00	114.00	121.00
BAF	Endocrinology (Metabolism)	102.00	190.00	201.00
BAG	Gastroenterology	146.00	272.00	287.00
BAH	Hematology	179.00	334.00	352.00
BAI	Hypertension	106.00	198.00	208.00
BAJ	Nephrology	208.00	387.00	409.00
BAK	Neurology	121.00	225.00	238.00
BAL	Outpatient Nutrition	42.00	79.00	83.00
BAM	Oncology	134.00	250.00	264.00
BAN	Pulmonary Disease	153.00	285.00	301.00
BAO	Rheumatology	101.00	188.00	199.00
BAP	Dermatology	78.00	146.00	154.00
BAQ	Infectious Disease	178.00	332.00	350.00
BAR	Physical Medicine	83.00	155.00	163.00
BAS	Radiation Therapy	128.00	238.00	251.00
BAT	Bone Marrow Transplant	115.00	214.00	226.00
BAU	Genetic	367.00	683.00	721.00
	B. Surgical Care			
BBA	General Surgery	148.00	276.00	291.00
BBB	Cardiovascular and Thoracic Surgery	320.00	595.00	628.00
BBC	Neurosurgery	173.00	323.00	341.00
BBD	Ophthalmology	90.00	168.00	177.00
BBE	Organ Transplant	399.00	742.00	783.00
BBF	Otolaryngology	106.00	197.00	207.00
BBG	Plastic Surgery	131.00	244.00	258.00
BBH	Proctology	84.00	157.00	165.00
BBI	Urology	112.00	209.00	221.00
BBJ	Pediatric Surgery	167.00	311.00	328.00
BBK	Peripheral Vascular Surgery	78.00	146.00	154.00
BBL	Pain Management	97.00	180.00	190.00
	C. Obstetrical and Gynecological (OB-GYN) Care			
BCA	Family Planning	57.00	106.00	112.00
BCB	Gynecology	89.00	165.00	175.00
BCC	Obstetrics	74.00	138.00	146.00
BCD	Breast Cancer Clinic	184.00	342.00	361.00
	D. Pediatric Care			
BDA	Pediatric	62.00	115.00	121.00

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency and other federal agency sponsored patients	Other (full/third party)
BDB	Adolescent	65.00	122.00	129.00
BDC	Well Baby	42.00	79.00	83.00
	E. Orthopaedic Care			
BEA	Orthopaedic	93.00	174.00	183.00
BEB	Cast	59.00	110.00	117.00
BEC	Hand Surgery	69.00	129.00	136.00
BEE	Orthotic Laboratory	67.00	125.00	132.00
BEF	Podiatry	56.00	105.00	111.00
BEZ	Chiropractic	25.00	47.00	50.00
	F. Psychiatric and/or Mental Health Care			
BFA	Psychiatry	124.00	230.00	243.00
BFB	Psychology	93.00	174.00	184.00
BFC	Child Guidance	57.00	105.00	111.00
BFD	Mental Health	104.00	194.00	204.00
BFE	Social Work	102.00	190.00	200.00
BFF	Substance Abuse	99.00	184.00	195.00
	G. Family Practice/Primary Medical Care			
BGA	Family Practice	74.00	138.00	146.00
BHA	Primary Care	77.00	143.00	151.00
BHB	Medical Examination	80.00	148.00	156.00
BHC	Optometry	50.00	93.00	98.00
BHD	Audiology	35.00	65.00	69.00
BHE	Speech Pathology	101.00	188.00	199.00
BHF	Community Health	66.00	123.00	130.00
BHG	Occupational Health	73.00	136.00	143.00
BHH	TRICARE Outpatient	56.00	104.00	109.00
BHI	Immediate Care	107.00	200.00	211.00
	H. Emergency Medical Care			
BIA	Emergency Medical	126.00	234.00	247.00
	I. Flight Medical Care			
BJA	Flight Medicine	88.00	164.00	173.00
	J. Underseas Medical Care			
BKA	Underseas Medicine	43.00	79.00	84.00
	K. Rehabilitative Services			
BLA	Physical Therapy	41.00	77.00	81.00
BLB	Occupational Therapy	61.00	114.00	120.00

III. Ambulatory Procedure Visit (APV) [6] Per Visit

MEPRS Code [4]	Clinical service	International military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
	Medical Care			
BB	Surgical Care	937.00	1,740.00	1,836.00
BD	Pediatric Care	233.00	430.00	454.00
BE	Orthopaedic Care	1,179.00	2,192.00	2,313.00
	All other B clinics not included above (BA, BC, BF, BG, BH, BI, BJ, BK and BL).	430.00	797.00	841.00

IV. Other Rates and Charges[1 2] *Per Visit*

MEPRS Code[4]	Clinical service	International military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
FBI	A. Immunization	$16.00	$30.00	$32.00
DGC	B. Hyperbaric Chamber[5]	153.00	285.00	301.00

C. Family Member Rate $10.85 (formerly Military Dependents Rate)

D. Reimbursement Rates For Drugs Requested By Outside Providers[7]

The FY 2000 drug reimbursement rates for drugs are for prescriptions requested by outside providers and obtained at a Military Treatment Facility. The rates are established based on the cost of the particular drugs provided based on the DoD-wide average per National Drug Code (NDC) number. Final rule 32 CFR Part 220, which was not published at the time that this package was prepared, eliminates the dollar threshold for high cost ancillary services and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' will be replaced with the phrase ''ancillary services requested by an outside provider'' on publication of final rule 32 CFR Part 220. The list of drug reimbursement rates is too large to include in this document. Those rates are available on request from OASD (Health Affairs)—Resource Management/TMA, Attention: Major Rose Layman, telephone: (703) 681–8910.

E. Reimbursement Rates for Ancillary Services Requested By Outside Providers[8]

Final rule 32 CFR Part 220, which was not published at the time that this package was prepared, eliminates the dollar threshold for high cost ancillary services and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' will be replaced with the phrase ''ancillary services requested by an outside provider'' on publication of final rule 32 CFR Part 220. The list of FY 2000 rates for ancillary services requested by outside providers and obtained at a Military Treatment Facility is too large to include in this document. Those rates are available on request from OASD (Health Affairs)—Resource Management/TMA, Attention: Major Rose Layman, telephone: (703) 681–8910.

F. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT)[9]	FY 2000 charge[10]	Amount of charge
Mammaplasty—augmentation.	85.50, 85.32, 85.31	19325 19324, 19318	Inpatient Surgical Care Per Diem Or APV	(a b)
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate	(a b c)
Facial Rhytidectomy	86.82, 86.22	15824	Inpatient Surgical Care Per Diem Or APV	(a b)
Blepharoplasty	08.70, 08.44	15820, 15821, 15822, 15823.	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate	(a b c)
Mentoplasty (Augmentation/Reduction).	76.68, 76.67	21208, 21209	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate	(a b c)
Abdominoplasty	86.83		Inpatient Surgical Care Per Diem	(a)
Lipectomy Suction per region[11].	86.83	15876, 15877, 15878, 15879.	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate	(a b c)
Rhinoplasty	21.87, 21.86	30400, 30410	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate	(a b c)
Scar Revisions beyond CHAMPUS.	86.84	1578—	Inpatient Surgical Care Per Diem Or APV or applicable Outpatient Clinic Rate	(a b c)
Mandibular or Maxillary Repositioning.	76.41		Inpatient Surgical Care Per Diem	(a)
Dermabrasion		15780	APV or applicable Outpatient Clinic Rate	(b c)
Hair Restoration		15775	APV or applicable Outpatient Clinic Rate	(b c)
Removing Tattoos		15780	APV or applicable Outpatient Clinic Rate	(b c)
Chemical Peel		15790	APV or applicable Outpatient Clinic Rate	(b c)
Arm/Thigh Dermolipectomy.	86.83	15836, 15832	Inpatient Surgical Care Per Diem Or APV	(a b)
Refractive surgery			APV or applicable Outpatient Clinic Rate	(b c)
Radial Keratotomy		65771		
Other Procedure (if applies to laser or other refractive surgery).		66999		
Otoplasty		69300	APV or applicable Outpatient Clinic Rate	(a b c)
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem Or APV	(a b)

G. Dental Rate [12] Per Procedure

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
	Dental Services ADA code and DoD established weight	$45.00	$109.00	$115.00

H. Ambulance Rate [13] Per Visit

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
FEA	Ambulance	$62.00	$116.00	$122.00

I. Ancillary Services Requested by an Outside Provider [8] Per Procedure

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
	Laboratory procedures requested by an outside provider CPT '99 weight multiplier.	$13.00	$20.00	$21.00
	Radiology procedures requested by an outside provider CPT '99 weight multiplier.	57.00	86.00	90.00

J. AirEvac Rate [14] Per Visit

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
	AirEvac Services—Ambulatory	$195.00	$364.00	$384.00
	AirEvac Services—Litter	567.00	1,056.00	1,114.00

K. Observation Rate [15] Per hour

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
	Observation Services—Hour	$17.00	$31.00	$32.00

Notes on Cosmetic Surgery Charges

[a] Per diem charges for inpatient surgical care services are listed in section I.B. (See notes 9 through 11, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in section III.C. (See notes 9 through 11, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c] Charges for outpatient clinic visits are listed in sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

Notes on Reimbursable Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 98 percent hospital and 2 percent professional charges. The outpatient per visit percentages are 89 percent outpatient services and 11 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

	MEPRS Code
Outpatient Care (Functional Category).	B
Medical Care (Summary Account).	BA

	MEPRS Code
Internal Medicine (Sub-account).	BAA

[5] Hyperbaric service charges shall be based on hours of service in 15-minute increments. The rates listed in section III.B. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) of service. Fractions of an hour shall be rounded to the next 15-minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[6] Ambulatory procedure visit is defined in DOD Instruction 6025.8, ''Ambulatory Procedure Visit (APV),'' dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). An APU is a location or organization within an MTF (or freestanding outpatient clinic) that is specially equipped, staffed and designated for the purpose of providing the intensive level of care associated with APVs. Care is required in the facility for less than 24 hours. All expenses and workload are assigned to the MTF-established APU associated with the referring clinic. The BB, BD and BE APV rates are to be used only by clinics that are subaccounts under these summary accounts (see [4] for an explanation of MEPRS hierarchical arrangement). The All Other APV rate is to be used *only* by those clinics that are *not* a subaccount under BB, BD or BE.

[7] Prescription services requested by outside providers (e.g., physicians and dentists) that are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from a Military Treatment Facility (MTF) that are prescribed by providers external to the MTF. Eligible beneficiaries (family members or retirees with medical insurance) are not liable personally for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider that includes the cost of the drugs plus a dispensing fee per prescription. The prescription cost is calculated by multiplying the number of units (e.g., tablets or capsules) by the unit cost and adding a $6.00 dispensing fee per prescription. Final rule 32 CFR Part 220, which was not published at the time that this package was prepared, eliminates the dollar threshold for high cost ancillary services and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' will be replaced with the phrase ''ancillary services requested by an outside provider'' on publication of final rule 32 CFR Part 220. The elimination of the threshold also eliminates the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeds $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR Part 220.

[8] Charges for ancillary services requested by an outside provider (*e.g.,* physicians and dentists) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical insurance obtain services from the MTF which are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated by multiplying the DoD established weight for the Physicians' Current Procedural Terminology (CPT 99) code by either the laboratory or radiology multiplier (section III.J). Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for ancillary services. Final rule 32 CFR Part 220, which was not published at the time that this package was prepared, eliminates the dollar threshold for high cost ancillary services and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' will be replaced with the phrase ''ancillary services requested by an outside provider'' on publication of final rule 32 CFR Part 220. The elimination of the threshold also eliminates the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeds $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR Part 220.

[9] The attending physician is to complete the CPT 99 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[10] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in section III.G. The patient shall be charged the rate as specified in the FY 2000 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the ''Other'' rate) for inpatient per diem surgical care services in section I.B., ambulatory procedure visits as contained in section III.C, or the appropriate outpatient clinic rate in sections II.A–K. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[11] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[12] Dental service rates are based on a dental rate multiplier times the American Dental Association (ADA) code and the DoD established weight for that code.

[13] Ambulance charges shall be based on hours of service in 15-minute increments. The rates listed in section III.I are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15-minute increment (*e.g.,* 31 minutes shall be charged as 45 minutes).

[14] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient. The appropriate charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC). These charges are only for the cost of providing medical care. Flight charges are billed by GPMRC separately using the commercial rate effective the date of travel plus $1.00.

[15] Observation Services are billed at the hourly charge. Begin counting when the patient is placed in the observation bed and round up to the nearest hour. If the status of a patient changes to inpatient, the charges for observation services are added to the DRG assigned to the case and not separately billed. If a patient is released from observation status and is sent to an APV, the charges for observation services are not billed separately but are added to the APV rate to recover all expenses.

Dated: November 4, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–29392 Filed 11–9–99; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Change in Location of the Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Notice was published October 22, 1999, at 64 FR 57081 that the Naval Research Advisory Committee (NRAC) Panel on Commercial Science and Technology will meet at the Jorge Scientific Corporation, 1225 Jefferson Davis Highway, 6th Floor, Suite 600, Crystal Gateway Two, Arlington, Virginia on November 15 and 16, 1999.

ADDRESSES: The meeting location has been changed to the Office of Naval Research, 800 North Quincy Street, Room 907, Arlington, Virginia. All sessions of the meeting will be open to the public. All other information in the previous notice remains effective.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director,

Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–6769.

Dated: November 2, 1999.

J.L. Roth,

Lieutenant Commander, U.S. Navy, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 99–29355 Filed 11–9–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 10, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 4, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Fiscal Operations Report and Application to Participate (FISAP) in the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant, and Federal Work-Study Programs.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEA or LEAs.

Reporting and Recordkeeping Burden: Responses: 4,200; *Burden Hours:* 25,748.

Abstract: This application data will be used to compute the amount of funds needed by each institution during the 2001–2002 Award Year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 1999–2000 academic year.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at 202–708–9266 or by e-mail to joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–29403 Filed 11–9–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 10, 1999.

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 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 4, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Telecommunications Demonstration Project for Mathematics.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 10.

Burden Hours: 400.

Abstract: This collection of information is required for applicants under the Telecommunications Demonstration Project for Mathematics, a discretionary grant program that supports a telecommunications-based professional development demonstration project. The purpose of this project is to improve the teaching of mathematics. This program is authorized by Part D of Title III of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6951–6952). The Department will use this information to make grant awards.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be only public comment notice published for this information collection.

Written comments and requests for copies of the proposed information collection request should be addressed to Danny Werfel, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, Room 10235, Washington, DC 20202–4651, or should be electronically mailed to the internet address *DWERFEL@OMB.EOP.GOV*.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs

Type of Review: New.
Title: Electronic Debit Payment Option for Student Loans.
Frequency: One time.
Affected Public: Individuals or households; Federal Government.
Reporting and Recordkeeping Burden:
Responses: 108,541
Burden Hours: 2 minutes each.
Abstract: The need for an Electronic Debit Account Program will give the borrower another option in which to repay federally funded student loans via automatic debit deductions from their checking accounts.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–29404 Filed 11–9–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Availability of Solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of Availability of Solicitation Number DE–PS07–00ID13859—Electric and Hybrid Vehicle Field Test Program.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office is soliciting applications for awards of financial assistance (*i.e.,* cooperative agreements) that will support the Electric and Hybrid Vehicle Field Test Program. The expected issuance date of Solicitation Number DE–PS07–00ID13859 is November 05, 1999. The solicitation will be available in its full text via the Internet at the following URL address: http://www.id.doe.gov/doeid/PSD/proc-div.html. The deadline for receipt of applications will be expected 48 calendar days after the issuance date of the solicitation or approximately by December 21, 1999.

ADDRESSES: Applications should be submitted to: Connie Osborne, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Connie Osborne, Contract Specialist at *osbornch@id.doe.gov* or Dallas L. Hoffer, Contracting Officer at *hofferdl@id.doe.gov*.

SUPPLEMENTARY INFORMATION: The solicitation is issued pursuant to 10 CFR 600.6(b). Eligibility for awards under this Electric and Hybrid Vehicle Field Test Program will not be restricted.

Issued in Idaho Falls on October 31, 1999.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 99–29439 Filed 11–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 00–02; Experimental and Computational Structural Biology

AGENCY: Office of Science, U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications in its Experimental and Computational Structural Biology Program. Research is sought for experimental and computational biological studies on the structural biology of proteins involved in DNA repair or in bioremediation.

DATES: Before preparing a formal application, potential applicants are encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 00–02, should be received by DOE by 4:30 p.m., E.S.T., January 12, 2000. A response encouraging or discouraging the submission of a formal application will be communicated by electronic mail by January 25, 2000.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., May 2, 2000, to be accepted for merit review and consideration for award in Fiscal Years 2000 and 2001.

ADDRESSES: Preapplications referencing Program Notice 00–02, must be sent by E-mail to sharon.betson@science.doe.gov. Preapplications will also be accepted if mailed to the following address: Ms. Sharon Betson, Office of Biological and Environmental Research, SC–73, 19901 Germantown Road, Germantown, Maryland 20874–1290.

Formal applications, referencing Program Notice 00–02, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 00–02. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, Office of Biological and Environmental Research, SC–73, U.S. Department of Energy, 19901

Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9009, FAX: (301) 903–0567, E-mail: roland.hirsch@science.doe.gov. Concerning the DNA Damage Recognition and Repair aspects: Dr. David G. Thomassen, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9817, FAX: (301) 903–8521, E-mail: david.thomassen@science.doe.gov. Concerning the Bioremediation aspects: Dr. Anna C. Palmisano, Office of Biological and Environmental Research, SC–73, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9963, FAX: (301) 903–8519, E-mail: anna.palmisano@science.doe.gov. The full text of Program Notice 00–02 is available via the Internet using the following web site address: http://www.sc.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The Office of Biological and Environmental Research supports a directed, basic research program in the areas of environmental, life and medical science. Major research program emphases are placed on characterization of human and microbial genomes, model organisms for understanding human gene function, structural biology, the biological effects of low dose radiation, global change, science and technology for environmental remediation, advanced imaging technologies, biomedical engineering and molecular nuclear medicine.

Nucleic acid and derived amino acid sequence data are flowing from genome projects at an accelerating rate. Utilizing the genomic sequence as a blueprint, large-scale high-throughput three-dimensional structural analysis of cell proteins is planned. However, knowledge of high resolution protein structure will not be sufficient for understanding of protein function in the cellular environment. Proteins do not act independently or statically in living systems. In carrying out their functions within cells, proteins form complexes with other proteins and interact with a variety of structural, regulatory and ligand molecules. The role of structure in determining protein interactions with diverse molecules in a cell is still poorly understood. It is necessary to observe dynamic changes in protein structure and to study protein modifications, translocation, and subcellular concentrations to fully understand protein function. Such studies are therefore a major focus of this program.

The transformation of the accumulating database of genomic information into a practical understanding of structure-function relationships in biological macromolecules and of the complicated systems that constitute living cells, tissues and organisms is paramount. The ultimate goal is to extend the understanding of the function and behavior of individual proteins to the genome scale through escalating levels of complexity from functional aggregates to metabolic circuits and homeostatic networks. This approach will eventually lead to a systems view of biology. This will enable diverse applications in human health, including individualized medicine and drug design, in biotechnology, including, new and improved biomaterials and new biocatalysis in industry and manufacturing, in environmental science for the design of enzymes for effective and efficient removal of environmental contaminants and in energy technology for the development and conversion of biomass for fuels.

This notice is to solicit applications for grants for experimental and computational structural biology studies to expand our understanding of the function of proteins and protein complexes relevant to two high priority research programs within the Office of Biological and Environmental Research: (1) Recognition and repair of DNA damage, and (2) Bioremediation of environmental contamination by metals and radionuclides.

DNA Damage Recognition and Repair

The Office of Biological and Environmental Research has a long standing interest in determining health risks from exposures to low levels of radiation, information that is critical to adequately and appropriately protect people and to make the most effective use of our national resources. The Low Dose Radiation Research Program (see http://www.sc.doe.gov/production/ober/lowdose.html), supports research on the recognition and repair of DNA damage induced by low doses of ionizing radiation. Understanding cellular DNA damage recognition and repair in response to low doses of radiation is a key component of determining health risks from low doses of radiation and is likely to be a significant factor in identifying genetic factors that determine individual sensitivity to low doses of radiation.

The Office of Biological and Environmental Research will accept applications to study proteins involved in the recognition and repair of radiation-induced DNA damage in prokaryotes and eukaryotes (including humans). Studies of interest include the following:

- High-resolution three-dimensional structure of normal and mutated DNA damage recognition and repair proteins using X-ray crystallography and NMR with an emphasis on structure/function relationships.
- Dynamic changes in protein structure associated with protein modification and with protein-protein and protein-DNA interactions that occur during the recognition and repair of radiation-induced DNA damage.
- Imaging of multi-protein DNA damage recognition and repair complexes, including high resolution, real-time optical imaging.
- Precise measurements of DNA damage recognition and repair protein concentrations, intracellular compartmentalization, and translocations in response to ionizing radiation.

Bioremediation

The Office of Biological and Environmental Research supports bioremediation research in its Natural and Accelerated Bioremediation Research Program (NABIR) (see http://www.sc.doe.gov/production/ober/EPR/nabir.html and http://www.lbl.gov/NABIR/). The major focus of this program is to gain a better understanding of the fundamental biological, chemical, geological, and physical processes that must be marshaled for the development and advancement of new, effective, and efficient processes for the remediation and restoration of the Nation's nuclear weapons production sites. A particular goal is to use molecular and structural biology to enable understanding of potential microbial remediation processes and to genetically modify macromolecules and organisms to improve their bioremedial activities. Many molecules, enzymes, and enzyme pathways that may be effective for bioremediation of metals and radionuclides are being identified.

The Office of Biological and Environmental Research will accept applications for structural biological studies in the area of bioremediation, particularly those concerned with the reduction of metals and radionuclides in microbes (*e.g.*, *Shewanella putrefaciens* MR 1). Studies of interest include the following:

- High resolution three dimensional structure of proteins involved in critical functions of microorganisms relevant to bioremediation processes, particularly those proteins involved in reducing metals and radionuclides. Structure/

function relationships should be stressed.

- Dynamic changes in protein structure related to the binding and reduction of metals and radionuclides.
- Realtime visualization of protein complexes involved in these bioremediation functions.
- Studies, comparable to those outlined above, on genetically modified proteins and protein complexes with potential to contribute to the bioremediation of metals and radionuclides.

Computational Structural Biology

The Office of Biological and Environmental Research is interested in the development of improved computational approaches for finding the proteins involved in DNA repair or in bioremediation processes, for predicting the three dimensional structures of these proteins, or for modeling the complex interactions of these proteins in living organisms. Computational approaches to predict protein structure and function will play an increasingly important role as the complete genomic sequences of more organisms, including human, are made available over the next few years. These computational approaches will also provide an important interface with the projected increases in the rate of protein structure determination. This program is focusing on sophisticated prediction, modeling, and simulation research to provide a generalizable approach to the interrelationship of macromolecular sequence, structure, and function with specific applications in DNA repair or in bioremediation.

The program places emphasis on projects that advance or integrate existing software tools in novel ways and/or develop new computational strategies to exploit databases of macromolecular structural information, including both high and low resolution. This includes the goal of predicting the structure and function of newly discovered gene sequences as well as the prediction or computational design of the chemical properties and architectural arrangement of proteins, protein-protein complexes, or protein-nucleic acid complexes needed for a particular functional application.

The Office of Biological and Environmental Research will accept applications for the development and use of computational tools that would ultimately accomplish one or more of the following objectives. A clear path should be presented from the fundamental computational research to be carried out to the testing of the new algorithms on one or more of these objectives:

- Develop high throughput computational methods to predict or identify, from sequence information, proteins involved in the recognition or repair of radiation-induced DNA damage or in the bioremediation of metals and radionuclides. This predictive capability will be essential for understanding the complete structure, function, and dynamic behavior of multiprotein complexes.
- Predict from sequence the structure or the function of proteins involved in the recognition or repair of radiation-induced DNA damage or in the bioremediation of metals and radionuclides.
- Characterize or simulate molecular interactions between proteins, proteins and DNA, or proteins and ligand molecules involved in the recognition or repair of radiation-induced DNA damage or in the bioremediation or metals and radionuclides including changes due to genetically modified proteins.

Program Funding

It is anticipated that up to $3 million will be available for multiple grant awards during Fiscal Years 2000 and 2001 contingent upon the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research and programmatic needs. We expect to award several research grants of up to $300,000 per year in this area.

Preapplications

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the title of the project, the institution, principal investigator name, address, telephone, fax, and E-mail address, and the research element(s) being addressed (DNA Damage Recognition and Repair; Bioremediation; or Computational Structural Biology). The preapplication should consist of two to three pages identifying and describing the research objectives, methods for accomplishment, and potential benefits of the effort. Preapplications will be evaluated relative to the scope and research needs for the Experimental and Computational Structural Biology Program.

Applications

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project
2. Appropriateness of the Proposed Method or Approach
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html. In addition, for this notice, the Project Description must be 25 pages or less, exclusive of attachments, and the application must contain a Table of Contents, an abstract or project summary, letters of intent from collaborators (if any), and short curriculum vitae consistent with National Institutes of Health guidelines. On the SC grant face page, form DOE F4650.2, in block 15, also provide the PI's phone number, fax number, and E-mail address.

DOE policy requires that potential applicants adhere to 10 CFR Part 745 ''Protection of Human Subjects'', or such later revision of those guidelines as may be published in the **Federal Register**.

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with NIH ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf, (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on October 29, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–29440 Filed 11–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, November 30, 1999, 8:30 a.m. to 5:30 p.m.; and Wednesday, December 1, 1999, 8:30 a.m. to 12 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, NW, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301–903–9817; david.thomassen@science.doe.gov), or Ms. Shirley Derflinger (301–903–0044; shirley.derflinger@science.doe.gov), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–70, 19901 Germantown Road, Germantown, Maryland 20874–1290. The most current information concerning this meeting can be found on the website: http://www.er.doe.gov/production/ober/berac.html.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that rise in the development and implementation of the biological and environmental research program.

Tentative Agenda

Tuesday, November 30 and Wednesday, December 1, 1999:

- Welcoming Remarks
- Opening of Meeting
- Remarks from Director, Office of Science
- Update on Office of Biological and Environmental Research Activities
- Review of Subcommittee Activities
- New Business
- Public Comment (10-minute rule)

Public Participation

The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes

The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on November 5, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–29438 Filed 11–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM–SSAB), Kirtland Area Office (Sandia). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 17, 1999: 5:30 p.m.–9 p.m. (MST)

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th Street, NE., Albuquerque, NM 87108, (505) 843–7270.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

5:30–5:45 p.m.—Check In/Minutes/Agenda Approval
5:45–6:15 p.m.—Corrective Action Management Unit (CAMU) Response—Ad Hoc presents information for Board consensus
6:15–6:45 p.m.—Stewardship Report
6:45–7 p.m.—Break
7:00–7:45 p.m.—Work Plan—JoAnne Rapmponi
7:45–8 p.m.—Public Comment
8–8:15 p.m.—Task Group Reports
8:15–8:20 p.m.—Coordinating Council Report Card—Open Discussion
8:20–8:30 p.m.—Proposed joint meeting with Pantex Citizens' Advisory Board and the Los Alamos Board
8:30–8:45 p.m.—New Business—Review agenda for Coordinating Council's Meeting
8:45–9:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184,

Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on November 5, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–29437 Filed 11–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on November 18 and 19, 1999, at the headquarters of the IEA in Paris, France in connection with a meeting of the IEA's Standing Group on Emergency Questions (SEQ).

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on November 18 and 19, 1999, beginning at approximately 2:15 p.m. on November 18. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on November 18, including a preparatory encounter among company representatives on November 18 from approximately 2:15 p.m. to 2:30 p.m.

The Agenda for the preparatory encounter among company representatives is to elicit views regarding items on the SEQ's Agenda. The Agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following Agenda:

November 18, 1999

(Note: The November 18 session of the meeting will be held jointly with the Standing Group on Oil Markets.)

1. Oil Markets: Past, Present and Future.
2. Energy Security: Past, Present and Future.
3. The Evolving Geopolitics of Oil.
4. Current Oil Market Situation.
5. Roundtable on the Future of Oil Markets and Energy Security.

November 19, 1999

1. Adoption of the Agenda.
2. Approval of the Summary Record of the 96th Meeting.
3. SEQ Work Program.
—The Year 1999 Work Program of the SEQ
—The Year 2000 Work Program of the SEQ
4. Evaluation of Seminar on IEA Oil Stock Strategy.
5. Evaluation of Disruption Simulation Exercise Stages 1 and 2.
6. The IEA Response Plans to Y2K.
7. Policy and Legislative Developments in Member Countries.
—Recent Developments in the EPCA
—Developments in other IEA Countries
8. Current IAB Activities.
9. Report to the SEQ by the Working Group on Petroleum Coke.
10. Emergency Reserve Situation of IEA Countries.
—Emergency Reserve and Net Import Situation of IEA Countries on July 1, 1999
11. Emergency Reserve Situation of IEA Candidate Countries.
12. Emergency Data System and Related Questions.
—Monthly Oil Statistics August 1999
—Q0F—Current Quarter Q41999
13. Emergency Reference Guide.
—Update of Emergency Contact Points List
—Supplementary Information Required for Y2K
14. IEA Dispute Settlement Centre: Panel of Arbitrators.
15. Other Business.
—Interpretation of paragraph 7 of the SEQ report to the Governing Board [IEA/GB(98)17] ''The IEA 1998 Emergency Response Exercise''
—Dates of meetings in 2000

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, D.C., November 5, 1999.

Mary Anne Sullivan,

General Counsel.

[FR Doc. 99–29539 Filed 11–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–57–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

November 4, 1999.

Take notice that on November 1, 1999, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 8, Fourth Revised Sheet No. 65, Third Revised Sheet No. 66, Fourth Revised Sheet No. 67, Fourth Revised Sheet No. 403 and Second Revised Sheet No. 404, to be effective December 1, 1999.

CIG states this filing proposes an overrun charge on quantities delivered in excess of those nominated and scheduled under an interruptible transportation agreement. CIG further states that the proposed overrun charge increases, as the relative size of the discrepancy increases, to deter larger deviations from schedule transactions. CIG avers that shippers serving markets with swing loads are increasingly using interruptible contracts as their designated swing account to avoid overrun fees on their firm transportation contracts, and this proposal will help manage this trend.

CIG further states, to insure that a shipper is not penalized for unscheduled deliveries that are outside the shipper's control, CIG proposes that the overrun penalty will not be imposed if the excess deliveries are the result of CIG system problems.

CIG further states that copies of this compliance filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29428 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–039]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1999.

Take notice that on November 1, 1999, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective November 1, 1999:

Twenty-Sixth Revised Sheet No. 30
Nineteenth Revised Sheet No. 31
Second Revised Sheet No. 31A
Original Sheet No. 31B

El Paso states that the above tariff sheets are being filed to implement six negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online.rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29432 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–117–008]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1999.

Take notice that on October 21, 1999, K N Interstate Gas Transmission Co. (KNI) tendered for filing tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1–A and First Revised Volume No. 1–C, set out below. KNI states it has also requested reconsideration or rehearing of the October 6, 1999 Letter Order mandating this filing.

The following tariff sheets are proposed to become effective August 1, 1998:

Third Revised Volume No. 1–A

Fourth Sub. Second Revised Sheet No. 4A
Fourth Sub. Second Revised Sheet No. 4C
Fourth Sub. Fifth Revised Sheet No. 4D

The following tariff sheets are proposed to become effective January 1, 1999:

Third Revised Volume No. 1–A

Third Sub. Sixth Revised Sheet No. 4D

The following tariff sheets are proposed to become effective June 1, 1999:

Third Revised Volume No. 1–A

Second Sub. Third Revised Sheet No. 4A
Second Sub. Third Revised Sheet No. 4C
Second Sub. Seventh Revised Sheet No. 4D

First Revised Volume No. 1–C

Second Sub. Twelfth Revised Sheet No. 4

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 12, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed./us/online.rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29425 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–331–012]

National Fuel Gas Supply Corporation; Notice of Reimbursement of Tariff Sheet

November 4, 1999.

Take notice that on November 1, 1999, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 13, with a proposed effective date of November 1, 1999.

On October 21, 1999, National Fuel submitted for filing certain tariff sheet to provide for negotiated rates on its system. The reason for this filing is to comply with the Commission's October 28, 1999, Letter Order in the above-referenced proceeding requiring National Fuel to resubmit Sheet No. 13 because of duplicative pagination. No changes were made to the content of the sheet.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29431 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–56–000]

Northwest Pipeline Corporation; Notice of Supplement to Non-Conforming Service Agreement

November 4, 1999.

Take notice that on October 28, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance a Letter Agreement between Northwest and Pan Alberta Gas (U.S.) Ltd. (PAGUS) dated August 24, 1999. Northwest also tendered filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following related tariff sheet, Second Revised Sheet No. 365, with an effective date of October 28, 1999.

Northwest states that the Letter Agreement clarifies certain performance obligations between Northwest and PAGUS and establishes specific implementation procedures related to the non-conforming service agreement between the parties dated January 31, 1996, as amended December 21, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29426 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–036]

David Springer v. Yadkin, Inc.; Notice of Complaint

November 4, 1999.

Take notice that on November 1, 1999, pursuant to Rule 206 of the Commission's Rules of Practice and Procedures, 18 CFR 385.206, David Springer filed with the Federal Energy Regulatory Commission a complaint asserting that Yadkin, Inc., licensee for the Yadkin Project No. 2197, is in violation of its license for (1) refusing to comply with 18 CFR 8.2 and 8.3 of the Commission's Regulations, and (2) allowing Carolina Sand Company to perform dredging activities at the confluence of Yadkin and South Yadkin Rivers.

All answers, interventions, and comments regarding this complaint must be filed with the Federal Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 2001 of the Commission's Rules of Practice and Procedure (18 CFR 385.2001). All such pleadings must be received by the Commission on or before November 22, 1999. Any person wishing to become a party to the proceeding must file a motion to intervene in accordance with Rule 214, 18 CFR 385.214.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (for assistance, call 202–208–2222).

David P. Boergers,

Secretary.

[FR Doc. 99–29421 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–136–014]

Williams Natural Gas Company; Notice of Filing of Refund Report

November 4, 1999.

Take notice that on October 29, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing its interruptible excess refund report for the three twelve-month periods ended September 1997, 1998, and 1999.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 12, 1999. 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 proceedngs. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29429 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–364–008]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

November 4, 1999.

Take notice that on October 29, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 certain revised tariff sheets.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's ''Order on Rehearing Supplementing Hearing Procedures'' issued September 29, 1999 in Docket No. RP95–364–006, as more fully described in the filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29427 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–364–009]

Wiliston Basin Interstate Pipeline Company; Notice of Refund Report

November 4, 1999.

Take notice that on October 29, 1999, Williston Basin Interstate Pipeline Company (Wiliston Basin), tendered for filing with the Commission its Refunds Report made in compliance with the Commission's Order issued September 29, 1999 in the above-referenced docket.

Williston Basin states that on October 28, 1999, interim refunds of amounts owed were sent by overnight delivery to Williston Basin's shippers in connection with rates that were in effect from January 1, 1996 through September 30, 1999, with interest calculated through October 29, 1999, in accordance with Section 154.501 of the Commission's Regulations and the Commission's order issued September 29, 1999.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 12, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29430 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–297–000, et al.]

Nevada Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 3, 1999.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER00–297–000]

Take notice that on October 28, 1999, Nevada Power Company (NPC), tendered for filing a written notice to Southwest Regional Transmission Association (SWRTA)'s Board of Directors of NPC's intent to withdraw from SWRTA effective October 1, 1999.

A copy of this filing has been served on Southwest Regional Transmission Association c/o Salt River Project, Phoenix, Arizona.

Comment date: November 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. PJM Interconnection, L.L.C.

[Docket No. ER00–298–000]

Take notice that on October 29, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing the following revised sheets to PJM's Open Access Transmission Tariff (Tariff):

Fourth Revised Sheet No. 2
Fourth Revised Sheet No. 3
First Revised Sheet No. 7b
Third Revised Sheet No. 20
Second Revised Sheet No. 24
First Revised Sheet No. 25
Second Revised Sheet No. 72
Second Revised Sheet No. 75
Original Sheet Nos. 87a through 87u

PJM states that the revised Tariff sheets establish separate unbundled charges for recovery of PJM's costs through eight formula rates corresponding to eight separate categories of services provided by PJM.

PJM states that it also requests that the Commission order a conforming change to page 1 of Schedule 3 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

PJM proposes an effective date of January 1, 2000 for the Tariff revisions, but requests that the Commission suspend the effectiveness of such revisions until June 1, 2000.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Indiana Michigan Power Company; d/b/a American Electric Power

[Docket No. ER00–311–000]

Take notice that on October 29, 1999, Indiana Michigan Power Company (I&M), d/b/a American Electric Power (AEP), tendered for filing with the Commission an Addendum to the Service Agreement dated November 23, 1994, between the City of Auburn, Indiana (Auburn), and I&M (Service Agreement).

AEP requests that the Addendum be made effective for consumption beginning November 1, 1999, and states that a copy of its filing was served upon Auburn and the Indiana Utility Regulatory Commission.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company

[Docket No. ER00–312–000]

Take notice that on October 29, 1999, Commonwealth Edison Company (ComEd), tendered for filing a Non-Firm Transmission Service Agreement with Commonwealth Edison Company, Power Purchase Option (ComEd PPO), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 7, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on ComEd PPO.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. UGI Development Company

[Docket No. ER00–313–000]

Take notice that on October 29, 1999, UGI Development Company (UGID) tendered for filing a Power Sales Agreement under UGID's market rate tariff, FERC Electric Rate Schedule No. 1, between UGID and UGI Utilities, Inc.

UGID requests an effective date of October 1, 1999.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. UGI Utilities, Inc.

[Docket No. ER00–314–000]

Take notice that on October 29, 1999, UGI Utilities, Inc., tendered for filing an Interconnection Agreement with UGI Development Company (UGI), setting forth the terms and conditions governing the interconnection of UGI's Hunlock Generator with UGI's transmission facilities.

UGI requests an effective date of October 1, 1999.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; and Southwestern Electric Power Company

[Docket No. ER00–315–000]

Take notice that on October 29, 1999, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) tendered for filing an executed Network Service Agreement (NSA) and an executed Network Operating Agreement (NOA) between the CSW Operating Companies and the Oklahoma Municipal Power Authority (OMPA).

The CSW Operating Companies request an October 1, 1999, effective date for the agreements.

The CSW Operating Companies state that a copy of this filing has been served on OMPA.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER00–316–000]

Take notice that on October 29, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing a Modified Notice of Cancellation of Network Service and Operating Agreements and Wholesale Short-Term Firm and Non-Firm Service Agreements. Additionally, NYSEG filed revised retail tariff sheets that further implement the NYSEG Retail Access Program. The Transmission Customers are listed in an attachment to the filing. The Agreements contain notification that the NYSEG Open Access Transmission Tariff may be superseded in whole or in part by the proposed tariff of the New York State Independent System Operator (NYISO).

NYSEG requests waiver of the Commission's notice requirements, expedited resolution, and that the termination be made effective as of the effective date of the NYISO tariff.

NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customers listed in the attachments to the filing.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; and Southwestern Electric Power Company

[Docket No. ER00–317–000]

Take notice that on October 29, 1999, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) tendered for filing changes to their Transmission Coordination Agreement in the above captioned docket.

The CSW Operating Companies request that the changes to the Transmission Coordination Agreement become effective as of January 1, 1997 and February 11, 1999.

The CSW Operating Companies state that they have served a copy of the filing on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission and the Louisiana Public Service Commission. The CSW Operating Companies state they also have served the filing on the parties to Docket No. ER98–3274–000.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Generation Company

[Docket No. ER00–319–000]

Take notice that on October 29, 1999, Northeast Generation Company (NGC), tendered for filing under Section 205 of the Federal Power Act a long-term power sales agreement with its affiliated power marketer Select Energy, Inc., (Select).

NGC states that a copy of this filing has been sent to Select.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Wayne-White Counties Electric Cooperative

[Docket No. ER00–320–000]

Take notice that Wayne-White Counties Electric Cooperative (WWCEC or Cooperative) on October 29, 1999, tendered for filing: a rate schedule; an Open Access Transmission Tariff; a tariff for power sales at market-based rates, and a petition for blanket authority to sell electricity at market-based rates; and a petition for waiver from requirements under part 37 of the Commission's Regulations, as promulgated in Order Nos. 889 and 889–A.

WWCEC has completed the repayment and retirement of all debts issued by the Rural Utilities Service of the United States Department of Agriculture, and it accordingly has become a public utility subject to the general regulatory jurisdiction of the Federal Energy Regulatory Commission under Part II of the Federal Power Act. At present, the WWCEC provides wholesale power service to one customer, the City of Fairfield, Illinois. It has submitted the Operations Agreement between WWCEC and the City for filing as a rate schedule pursuant to Section 205(c) of the Federal Power Act and Section 35.12 of FERC's regulations.

Pursuant to section 35.28 of the Commission's Regulations, the Cooperative has also filed a nondiscriminatory Open Access Transmission Tariff. In addition, WWCEC has filed a Power Sales at Negotiated Rates Tariff, and it is requesting blanket authority to make wholesale sales of electric power at market-based rates. Finally, because it operates limited, discrete transmission facilities rather than an integrated grid, WWCEC is applying for a waiver of Part 37 of the Commission's Regulations, as promulgated in Commission Order Nos. 889 and 889–A.

WWCEC requests a waiver of the Commission's 60-day notice requirement for that rate schedule and requests an effective date of March 18, 1999.

Copies of the filing were served upon WWCEC's only jurisdictional customer, the City of Fairfield, Illinois.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corporation; on Behalf of Monongahela Power Company; The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–324–000]

Take notice that on October 29, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 46 to add one (1) new Customer to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis.

Allegheny Power requests a waiver of notice requirements to make service available as of November 17, 1999, to Allegheny Energy Supply Company, LLC.

Copies of the filing have been provided to the Public Utilities

Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Company Services, Inc.

[Docket No. ER00–325–000]

Take notice that on October 29, 1999, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Operating Companies), tendered for filing unilateral amendments to its Unit Power Sales Agreements with Florida Power & Light Company, Florida Power Corporation, Jacksonville Electric Authority and the City of Tallahassee, Florida. The purpose of these amendments it to provide for recovery of sulfur dioxide emission allowance costs incurred in compliance with Phase II restrictions contained in the Clean Air Act Amendments of 1990.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER00–326–000]

Take notice that on October 29, 1999, the New England Power Pool Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Forster, Inc. (Forster). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Forster's signature page would permit NEPOOL to expand its membership to include Forster. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Forster a member in NEPOOL.

The Participants Committee requests an effective date of November 1, 1999, for commencement of participation in NEPOOL by Forster.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER00–327–000]

Take notice that on October 29, 1999, the New England Power Pool Participants Committee tendered for filing a request for a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Entergy Power Marketing Corp. (EPMC). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of EPMC's signature page would permit NEPOOL to expand its membership to include EPMC. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make EPMC a member in NEPOOL.

The Participants Committee requests an effective date as of January 1, 2000, for commencement of participation in NEPOOL by EPMC.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool

[Docket No. ER00–328–000]

Take notice that on October 29, 1999, the New England Power Pool (NEPOOL or Pool) Participants Committee tendered for filing a request for termination of membership in NEPOOL, with an effective date of January 1, 2000, of UNITIL Resources, Inc. (URI). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by URI. The NEPOOL Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Participants Committee states that termination of URI with an effective date of January 1, 2000 would relieve this entity, at URI's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove URI from membership in the Pool.

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Mantua Creek Generating Company, L.P.

[Docket No. ER99–4162–001]

Take notice that on October 29, 1999, Mantua Creek Generating Company, L.P. tendered for filing a revised rate schedule in compliance with the Commission's order at 89 FERC ¶ 61,024 (1999).

Comment date: November 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Gulfstream Energy, LLC; Lambda Energy Marketing Company; Industrial Gas & Electric Services Company; Williams Energy Marketing & Trading Company; Western Power Services, Inc.; Texaco Natural Gas Inc.; OST Energy Trading Inc.; Energy Unlimited, Inc.; DTE Energy Trading, Inc.; Alpena Power Marketing, L.L.C.; Nine Energy Services, LLC; Clinton Energy Management Services, Inc.; Select Energy, Inc.;

[Docket No. ER94–1597–017; Docket No. ER94–1597–018; Docket No. ER94–1672–019; Docket No. ER95–257–019; Docket No. ER95–305–021; Docket No. ER95–748–017; Docket No. ER95–748–018; Docket No. ER95–1787–015; Docket No. ER96–553–016; Docket No. ER98–1622–006; Docket No. ER97–3834–008; Docket No. ER97–4745–008; Docket No. ER98–1915–006; Docket No. ER98–3934–005; and Docket No. ER99–14–005]

Take notice that on October 28, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

19. Seagull Power Services Inc.; and PP&L EnergyPlus Co., LLC

[Docket No. ER96–342–012; and Docket No. ER99–3606–001]

Take notice that on October 26, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

20. Questar Energy Trading Company; PSEG Energy Technologies Incorporated; Salem Electric, Inc.; ONEOK Power Marketing Company; Energy International Power Marketing Corporation

[Docket No. ER96–404–016; Docket No. ER97–2176–011; Docket No. ER98–2175–006; Docket No. ER98–3897–005; and Docket No. ER98–2059–006]

Take notice that on October 27, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

21. Fina Energy Services Company

[Docket No. ER97–2413–010]

Take notice that on October 21, 1999, Fina Energy Services Company filed their quarterly report for the quarter ending September 30, 1999, for information only.

22. CH Resources, Inc.

[Docket No. ER00–207–000]

Take notice that on October 22, 1999, CH Resources, Inc. filed their quarterly report for the quarter ending September 30, 1999.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. UtiliCorp United Inc. South Eastern Electric Development Corp.

[Docket No. ER00–253–000 Docket No. ER00–276–000]

Take notice that on October 26, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Monroe Power Company; Mountainview Power Company; Riverside Canal Power Company; West Penn Power Company d/b/a; Allegheny Energy; Western Resources, Inc.; Western Resources, Inc.; Duke Power; and Archer-Daniels-Midland Company;

[Docket No. ER00–254–000; Docket No. ER00–256–000; Docket No. ER00–257–000; Docket No. ER00–265–000; Docket No. ER00–266–000; Docket No. ER00–267–000; and Docket No. ER00–294–000]

Take notice that on October 27, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Harbor Cogeneration Company Phelps Dodge Energy Services, LLC; Duke Energy St. Francis, LLC; New England Power Company; Casco Bay Energy Company, L.L.C.; Bridgeport Energy, L.L.C.; Consolidated Edison Company of New York, Inc.; SEI Wisconsin, L.L.C.; Williams Generation Company-Hazelton; Northeast Utilities Service Company; Canadian Niagara Power Company Limited; EME Homer City Generation, L.P.; Portland General Electric Company; Montana-Dakota Utilities Co.; Wisconsin Public Service Corporation; Duquesne Light Company; Avista Corporation; Northeast Empire Limited Partnership #1; and Northeast Empire Limited Partnership #2

Docket No. ER00–269–000; Docket No. ER00–270–000; Docket No. ER00–271–000; Docket No. ER00–272–000; Docket No. ER00–273–000; Docket No. ER00–274–000; Docket No. ER00–275–000; Docket No. ER00–277–000; Docket No. ER00–278–000; Docket No. ER00–279–000; Docket No. ER00–280–000; Docket No. ER00–281–000; Docket No. ER00–282–000; Docket No. ER00–285–000; Docket No. ER00–286–000;Docket No. ER00–288–000; Docket No. ER00–291–000; Docket No. ER00–295–000; andDocket No. ER00–296–000]

Take notice that on October 28, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending September 30, 1999.

Comment date: November 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Public Service Electric and Gas Company; PSEG Fossil LLC; PSEG Nuclear LLC; PSEG Energy Resources & Trade; and LLC

[Docket Nos. EC99–79–000 and ER99–3151–001]

Take notice that on October 27, 1999, Public Service Electric and Gas Company (PSE&G), PSEG Fossil LLC, PSEG Nuclear LLC, and PSEG Energy Resources & Trade LLC (collectively, Applicants) tendered for filing copies of its compliance filing in the above referenced docket in response to Ordering Paragraphs (G), (H), (J), (K), (L), and (M) of the Commission's ''Order Authorizing Disposition of Jurisdictional Facilities and Conditionally Accepting for Filing Related Rate Schedule Filings'', *Public Service Electric and Gas Company, et. al.*, 88 F.E.R.C. ¶ 61,299 (September 29, 1999).

Comment date: November 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29419 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2035–006; Colorado]

City and County of Denver; Notice of Availability of Draft Environmental Assessment

November 4, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Gross Reservoir Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The project is located on South Boulder Creek, near the city of Boulder, in Boulder County, Colorado. The project occupies federal lands managed by the U.S. Forest Service, Roosevelt National Forest, and the Bureau of Land Management. The DEA contains the staff's analysis of the environmental impacts of the proposal and concludes that approval, with appropriate environmental protective measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. This DEA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202)208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For further information, contact Dianne Rodman, Environmental Coordinator, at (202) 219–2830.

David P. Boergers,

Secretary.

[FR Doc. 99–29420 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–160 Oklahoma]

Grand River Dam Authority; Notice of Availability of Final Environmental Assessment

November 4, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing has prepared a final environmental assessment (FEA) for Grand River Dam Authority's proposal to permit Gene Gregg, d/b/a Tera Miranda Marina, (Permittee) to improve and enlarge an existing commercial marina facility located on the east side of Grand Lake's Monkey Island. The existing marina facility includes 20 boat docks with a total of 129 slips. The permittee requests permission to remove from the site an existing jetty and two manmade breakwaters and to install and operate certain additional facilities. The new proposed facilities include five new boat docks with a total of 116 slips, two floating breakwaters, a building containing showers and a restroom facility, and a waste disposal system. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The FEA is attached to a Commission order issued November 1, 1999 for the above application. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. In the FEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment. For further information, please contact the project manager, Jon Cofrancesco at (202) 219–0079. This FEA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29422 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 4, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11817–000.

c. *Date Filed:* September 27, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Gibson Dam.

f. *Location:* On the North Fork Sun River, near the town of Simms, Teton County and Lewis and Clark County, Montana. The project would utilize federal lands administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* William H. Diehl, E-mail address, William.Diehl@ferc.fed.us, or telephone (202) 219–2813.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the U.S. Bureau of Reclamation's existing Gibson Dam and would consist of: (1) five 300-foot-long steel penstocks 72 inches in diameter beginning at the existing outlet works; (2) a powerhouse containing five generating units totaling 15,000 kW; (3) a tailrace discharge and energy dissipation structure; (4) a 14.7=kV transmission line about 500 feet long; and (5) appurtenant facilities.

Applicant will finance all efforts required to conduct studies and to prepare and file a license application. These studies and preparations are estimated to cost about $2,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with the CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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 application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to 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. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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 comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–29423 Filed 11–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 4, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11816–000.

c. *Date Filed:* September 27, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Meeks Cabin Dam.

f. *Location:* On the Blacks Fork River, near the town of Millburne, Uinta County, Wyoming. The project would utilize federal lands administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* William H. Diehl, E-mail address, William.Diehl@ferc.fed.us, or telephone (202) 219–2813.

j. *Deadline Date:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the U.S. Bureau of Reclamation's existing Meeks Cabin Dam and would consist of: (1) A 300-foot-long steel penstock 64 inches in diameter beginning at the existing outlet works; (2) a powerhouse containing a 1,000-kW generating unit; (3) a tailrace discharge and energy dissipation structure; (4) a 14.7-kV transmission line about 1,000 feet long; and (5) appurtenant facilities.

Applicant will finance all efforts required to conduct studies and to prepare and file a license application. These studies and preparations are estimated to cost about $700,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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 application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'',

''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to 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, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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 comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–29424 Filed 11–8–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6473–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Mobile Air Conditioning Retrofitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Activities Associated with EPA's Mobile Air Conditioner Retrofitting Program, EPA ICR No. 1774.01, and OMB No. 2060–0350, expiration date 2/28/00. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 10, 2000.

ADDRESSES: Comments should be submitted in duplicate to the attention of Air Docket No. A–99–37; Environmental Protection Agency; 401 M Street, SW. (MC–6102); Washington, DC 20460 (submissions may be faxed to (202) 260–4400). The Air and Radiation Docket is located in Room M–1500; Waterside Mall (Ground Floor); U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, DC 20460. The docket may be inspected Monday through Friday from 8 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket materials. For further questions, contact the docket at (202) 260–7549.

FOR FURTHER INFORMATION CONTACT: Anhar Karimjee at phone: (202) 564–2683, fax: (202) 565–2096, or e-mail: karimjee.anhar@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action include: new and used car dealers, gas service stations, top and body repair shops, and automotive repair shops (including air conditioning and radiator specialty shops).

Title: Information Collection Activities Associated with EPA's Mobile Air Conditioner Retrofitting Program (OMB Control No. 2060–0350; EPA ICR No. 1774.01) expiring 2/28/00.

Abstract: Section 612 of the Clean Air Act (CAA) requires EPA to promulgate rules making it unlawful to replace any ozone-depleting substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available. In 1994, the Significant New Alternatives Policy (SNAP) Program was enacted, enabling the Agency to review available substitutes for ozone depleting substances and determine their acceptability. The SNAP program includes review of potential alternatives to ozone-depleting refrigerants used for air conditioning motor vehicles. EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. The purpose of this Information Collection Request (ICR) is to estimate the burden associated with the 40 Code of Federal Regulations part 82 requirement that service technicians label mobile air conditioners with information about new refrigerants when they retrofit a system. These labels acknowledge that the retrofitting has been completed, and that the mobile air conditioner cannot accept chloroflourocarbon (CFC) refrigerant. In addition, the labels provide essential information to technicians about the specific refrigerant used in the air conditioning system. This information assists the technician in avoiding service practices that might result in cross-contamination and system failure. Responses to the collection of information are mandatory (section 612 of the Clean Air Act and 40 Code of Federal Regulations part 82). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA estimates that there are approximately 140,000 service technicians, who will be responsible for retrofitting some 15,000,000 cars by the year 2002 (5,000,000 cars retrofitted per year). EPA estimates the time to complete and apply the label at 5 minutes per car, making the total burden 1,250,000 hours. At $50 per hour, the overall cost associated with the burden hours is $62,500,000. The cost for designing, typesetting, printing and distributing 15,000,000 labels is $1,500,000 ($ .10 per label). Adding the labor and capital costs together yields a total cost burden of $64,000,000. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed

to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 2, 1999.

Edward Callahan,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 99–29450 Filed 11–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6473–5]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that, on October 18, 1999, the U.S. Environmental Protection Agency (EPA) Environmental Appeals Board (Board) dismissed an appeal of a permit issued for the Milford Power Plant by the Connecticut Department of Environmental Protection (CT–DEP) pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations in the Connecticut State Implementation Plan (SIP).

DATES: The effective date for the Board's decision is October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Averback, Office of Regional Counsel, U.S. EPA Region 1, One Congress St.—Suite 1100, Boston, MA, 02114, 617–918–1078.

SUPPLEMENTARY INFORMATION: On April 16, 1999, CT–DEP issued CT PSD Permit Numbers 105–0068 and 105–0069 to PDC—El Paso Milford, L.L.C. for the construction of a new power plant in Milford, CT. On May 17, 1999, Goal Line Environmental Technologies, L.L.C. (Goal Line) petitioned the Board to review these permits. The substance of Goal Line's petition was to challenge portions of the permit that were issued under an approved PSD program incorporated into the SIP for Connecticut at 40 CFR 52.370(c)(56). On October 18, 1999, the Board dismissed the petition of Goal Line due to lack of jurisdiction (see *In re: Milford Power Plant,* PSD Appeal No. 99–2).

The effective date of the permit is determined by Connecticut state law because the permit was issued by the State under its SIP-approved program. The effective date for the Board's decision is October 18, 1999. If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of this determination under Section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which this determination is published in the **Federal Register**. Under Section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: November 2, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–29448 Filed 11–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Region 7 087–1087; FRL–6473–6]

Performance Evaluation Reports for Fiscal Year 1998; Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly evaluations on the performance of grant recipients under approved State/EPA Agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, the Nebraska Department of Environmental Quality, the Iowa Department of Natural Resources, and the Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act.

EFFECTIVE DATE: September 14, 1999.

ADDRESSES: Copies of the evaluation reports are available for public inspection at EPA's Region VII Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at (913) 551–7607.

Dated: October 15, 1999.

William A. Spratlin,

Acting Regional Administrator, Region VII.

[FR Doc. 99–29447 Filed 11–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6473–3]

Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on December 2 and 3, 1999. The meeting will take place at the Radisson Barcelo Hotel, 2121 P Street, NW, Washington, DC from 9 a.m. to 5 p.m. on Thursday, December 2nd and Friday, December 3rd. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Communications, Education and Media Relations (OCEMR) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Keho, Office of Environmental Education (1704), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or call (202) 260–4129.

Dated: November 3, 1999.

Ginger Keho,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 99–29449 Filed 11–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34205; FRL–6393–9]

Organophosphate Pesticides; Availability of Preliminary Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of the EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary human health risk assessments and related documents for trichlorfon, and the preliminary human health and ecological risk assessments and related documents for dicrotophos. This notice also starts a 60-day public comment period for the preliminary risk assessments. Comments are to be limited to issues directly associated with the two organophosphates that have the risk assessments placed in the docket and should be limited to issues raised in those documents. By allowing access and opportunity for comment on the preliminary risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these organophosphate pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments on these assessments, identified by the docket control number for the particular organophosphate pesticide of interest, must be received on or before January 10, 2000. Use the table in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' to determine the docket control number.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify the docket control number for the particular organophosphate pesticide of interest in the subject line on the first page of your response. Use the table in Unit I.C. to determine the docket control number.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the preliminary risk assessments for trichlorfon and dicrotophos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the preliminary risk assessments for the two organophosphate pesticides may also be accessed at http: www.epa.gov/pesticides/op.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34206 for dicrotophos and OPP–34207 for trichlorfon. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify the docket control number for the particular organophosphate pesticide of interest in the subject line on the first page of your response. Use the following table to determine the docket control number:

Chemical	OPP Docket no.
Dicrotophos	OPP–34206
Trichlorfon	OPP–34207

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number. Electronic comments may also

be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA as amended by the FQPA. The Agency's preliminary risk assessments for two organophosphate pesticides are available in the individual organophosphate pesticide dockets: Dicrotophos and trichlorfon.

Included in the individual organophosphate pesticide dockets are the Agency's preliminary risk assessments. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the two organophosphate pesticides listed in this notice. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for the two organophosphate pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessments, these risk assessments and registrant responses will be placed in the individual organophosphate pesticide dockets. A notice of availability for subsequent assessments will appear in the **Federal Register**.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the pesticides specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to these specific chemicals. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the organophosphate tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by January 10, 2000, at the address given under Unit I.C. Comments will become part of the Agency record for each individual organophosphate pesticide to which they pertain.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 4, 1999.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–29482 Filed 11–9–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34199; FRL–6380–8]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Office of Pesticide Programs (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 224, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the **''Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number [OPP-34199]. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in 13 pesticide registrations containing the active ingredient chlorpyrifos, as listed in Table l below. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Although the use of chlorpyrifos products on popcorn and carrots have been registered sites for chlorpyrifos residues on these commodities under the Federal Food, Drug, and Cosmetic Act (FFDCA).

Therefore, under FIFRA section 2(bb), these uses represent an unreasonable adverse effect on the environment, as they could result in human dietary risk from the residues resulting from use of a pesticide in or on food consistent with the standard under section 408 of FFDCA. As such, the Agency is hereby waiving the 180–day comment period normally given for the deletion of a minor agricultural use, in accordance with FIFRA section 6(f)(1)(c). The Agency has determined that, while these actions require publication for the purpose of announcement, a comment period is not warranted.

TABLE 1—Registrations with Requests for Amendments to Delete Uses in Certain Pesticide Registrations

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
051036–00247	Chlorpyrifos 2.5G	Chlorpyrifos	Popcorn
062719–00014	Dursban 1/2G	Chlorpyrifos	Popcorn
062719–00023	Lorsban 4E	Chlorpyrifos	Popcorn
062719–00034	Lorsban 15G	Chlorpyrifos	Popcorn
062719–00056	Dursban 1–12	Chlorpyrifos	Popcorn
062719–00085	Lorsban 7.5G	Chlorpyrifos	Popcorn
062719–00210	Dursban 1G	Chlorpyrifos	Popcorn
062719–00220	Lorsban 4E	Chlorpyrifos	Popcorn
062719–00269	Dursban NSX–4	Chlorpyrifos	Popcorn
062719–00276	Lorsban 4E	Chlorpyrifos	Popcorn
062719–00284	Dursban NSX–6	Chlorpyrifos	Popcorn
066222–00018	Chlorpyrifos 15G	Chlorpyrifos	Popcorn
066222–00019	Chlorpyrifos 4E AG	Chlorpyrifos	Popcorn

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—Registrants Requesting Amendments to Delete Uses in Certain Pesticide Registrations

Company No.	Company Name and Address
051036	Micro Flo Company, P.O. Box 772099, Memphis, TN 38117–2099
062719	Dow Agro Sciences, 9330 Zionsville Road, Indianapolis,IN 46268
066222	Makteshim-Agan of North America Inc., 551 Fifth Ave., Suite 1100, New York, NY 101076

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months the effective date of use deletions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 20, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–29078 Filed 11–9–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–896; FRL–6388–3]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

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 docket control number PF–896, must be received on or before December 10, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–896 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number/e-mail address	Address	Petition number(s)
Cynthia Giles-Parker (PM 22).	Rm. 247, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA	PP 8F4998
Shaja Brothers	Rm. 237, CM #2, 703–308–3194, e-mail: brothers.shaja@epamail.epa.gov.	Do.	PP 9E3810, 9E3813, OE3912, 9E5075, and 9E6061

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–896. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–896 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal

Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: ''*opp-docket@epa.gov* ,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–896. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

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.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 1, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The 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. GMJA Specialties

8F4998

EPA has received a pesticide petition (8F4998) from GMJA Specialties, 10001 13th Avenue, East Bradenton, FL proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of PT807-HCl N,N-Diethyl-N-2-(4-methybenzyloxy)ethylamine hydrochloride in or on the raw agricultural commodity (RAC) oranges at 0.01 parts per million (ppm). 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*. The metabolism of PT807-HCl in plants and animals is understood. In plants (oranges), unchanged parent is the only residue identified in fruit. Valencia orange trees were treated with ^{14}C PT807-HCl at a nominal rate of 1,000 ppm (approximately 60x the maximum recommended application rate). Fruit from the previous season's crop present on the tree at the time of application was harvested 50 days after treatment (DAT) and mature fruit (not present on the tree at application) was harvested 370 DAT. Total radioactive residue (TRR) levels were 0.538 ppm in 50 DAT orange samples and were 0.051 ppm in 370 DAT orange samples. Most of the radioactivity was present on the peel (88.63% TRR or 0.475 ppm in the 50 DAT fruit, and 64.19% TRR or 0.033 ppm in the 370 DAT fruit). Unchanged parent PT807-HCl was detected in 50 DAT mature fruit (0.386 ppm), but not in the 370 DAT mature fruit (less than 0.001 ppm).

The metabolism of PT807-HCl in oranges has been determined. The only significant metabolite is unchanged parent. No detectable residues of PT807-HCl are anticipated in oranges treated at the recommended application rate.

^{14}C PT807-HCl was extensively metabolized and readily eliminated in the urine and feces following oral administration to a lactating goat. The efficient elimination process resulted in neglible to modest retention of radioactive residues in milk and tissues (less than 0.2% of the administered dose). No residues of unchanged parent were identified in tissues or milk. The rapid elimination of PT807-HCl and its metabolites coupled with the highly exaggerated dose (approximately 3,600x the dietary burden) clearly indicate that no detectable residues of PT807-HCl will accumulate in milk and tissues.

2. *Analytical method*. An analyticial method capable of extracting PT807-HCl from whole oranges, juice, and dried pulp using organic solvents has been validated. Extracted PT807-HCl residues are analyzed using high performance liquid chromatography (HPLC) with a ultraviolet (UV) detector. The limit of

quantitation (LOQ) of the method is 0.01 ppm.

3. *Magnitude of residues*. Seventeen field trials were conducted using various varieties of oranges in California (4 trials), Florida (12 trials), and Texas (1 trial). Two of the trials (1 in California and 1 in Florida) were declined studies with sampling intervals of 0, 7, 14, 30, and 60 days after application. For all other trials, oranges were harvested at the earliest possible time for normal commercial harvest after a single application with PT807-HCl at the maximum recommended application rate, 6 gram active ingredient per acre (g/ai/A). At some of the test sites (depending on the variety of oranges), the previous season's crop was present on the tree at application for these trials, oranges were collected 0 to 68 DAT. In all other trials, fruit were not present on the trees at applications and mature oranges were collected at normal harvest (197 to 359 DAT). Samples were analyzed for residues of PT807-HCl by HPLC with UV detection. Residues of PT807-HCl were nondetectable (less than 0.01ppm) in all treated and control samples.

A processing study was conducted using oranges treated at 5x the maximum application rate in California. The harvested oranges were from the previous season's crop and were on the tree at the time of application. Therefore, the application represents the maximum possible residues. No detectable residues were measured in whole oranges, juice, or oil. Residues of PT807-HCl were detected in dried pulp at 0.015 and 0.017 ppm (average 0.016 ppm). Correcting the measured residues for the exaggerated application rate, no detectable residues are likely in any processed product of oranges.

Residues of PT807-HCl were determined to be stable in whole orange, fruit, oil, juice, and dried pulp stored frozen up to 113 days.

B. Toxicological Profile

1. *Acute toxicity*. PT807-HCl exhibits low acute oral and dermal toxicity (Toxicity Category III, LD_{50} of 531 milligrams/kilograms (mg/kg) and greater than 2,525 mg/kg, respectively) and inhalation toxicity (Toxicity Category IV, LC_{50} of greater than 2.08 milligrams per liter (mg/L). PT807-HCl is minimally irritating to the eyes, only slightly irritating to the skin (Toxicity Categories III and IV, respectively), and is not a dermal sensitizer. An acute neurotoxicity study in rats showed no specific evidence of neurotoxicity; transient non-specific signs of toxicity were observed in this study.

2. *Genotoxicity*. The genotoxic potential of PT807-HCl has been assessed in an *Ames Salmonella* assay, a Chinese hampster ovary (CHO) hypoxanthine guanine phophoribosyl transferase (HGPRT) gene mutation assay, mouse micronucleus assay, an *in vitro* CHO assay for chromosomal aberrations, and an *in vivo* unscheduled DNA synthesis (UDS) assay. The *in vitro* chromosomal aberration assay was positive with and without metabolic activation; however, all of the remaining assays were negative, indicating very low genotoxic potential of PT807-HCl. The contribution of the positive *in vitro* chromosomal aberration assay is weakened by the negative finding in an *in vivo* study (mouse micronucleus) measuring a similar endpoint.

3. *Reproductive and developmental toxicity*. Based on currently available data, PT807-HCl does not present a unique hazard to infants or children and there is no evidence that children are likely to be more sensitive to the toxic effects of PT807-HCl. A 2-generation reproductive toxicity study with PT807-HCl in rats showed developmental delays in pups associated with decreased weight gain at 2,000 and 4,000 ppm, doses which were also toxic to the adult animals. PT807-HCl showed evidence of developmental effects in rats only at a severely maternally toxic dose level. No evidence of developmental toxicity was seen in rabbits.

4. *Subchronic toxicity*. Studies have been conducted with PT807-HCl in mice, rats, and dogs. In dietary studies in rats and dogs, the most notable findings include decreased food consumptions and a consequent decrease in body weight gain (resulting primarily from poor palatability of the test material). Dogs also showed a trend toward anemia, and males showed arrested or delayed sexual maturation at the high dose (equivalent to approximately 222 mg/kg/day). Marked weight loss and decreased weight gain was observed at this dose, and this dose level is considered to have exceeded, a maximum tolerance dose (MTD). Rats dosed by gavage showed signs of neurotoxic effects (tremors in coordination changes in activity) at doses greater than or equal to 300 mg/kg/day. These clinical signs disappeared 2-4 hours post-dosing. Rats receiving dietary administration of up to 5,000 ppm PT807-HCl for 13 weeks did not exhibit any neurotoxic effects. In mice, treatment-related decreased food consumption and body weight gain were seen in males at 7,000 ppm highest dose tested (HDT). No treatment-related toxicity was evident at dietary doses up to 3,500 ppm (479 and 635 mg/kg/day for males and females respectively).

5. *Chronic toxicity*. Ecolyst is not oncogenic when administered to rats at dietary concentration of up to 10,000 ppm for 24 months, and when administered to mice at doses up to 7,000 ppm (equivalent to 1,050 mg/kg/day/(male) 1,250 mg/kg/day(female) for 18 months. In the rat, survival was increased in the treated animals. Systemic toxicity was evident from decreased body weight gains and increased incidences of hepatocellular hypertrophy and foci cellular alteration of hepatocytes in both rats and mice receiving dietary levels of 5,000 and 10,000 ppm of PT807-HCl. In the mouse, decreased body weights were noted in males at 7,000 ppm (1,050 mg/kg/day) HDT. No other treatment-related effects were noted. There were no treatment-related effects of dietary administration of PT807-HCl to dogs at doses up to 5,000 ppm (equivalent to 152 male/136 female mg/kg/day) except for a transient decrease in body weight and food consumption in the first few weeks of the study, and food consumption in the first few weeks of the study, primarily at the 5,000 ppm level, due to poor palatability of the test diet.

6. *Plant and animal metabolism*. Valencia orange trees treated with approximately 470 mg ^{14}C PT807-HCl in 400 ml spray solution/tree. Samples were extracted and radioactivity was partitioned into organic, aqueous, and non-extractable fractions. Extractable, radioactivity was analyzed by HPLC to separate parent and metabolites. Unchanged parent PT807-HCl was detected in leaves (14.191 ppm), immature fruit (0.093), and mature fruit (0.386 ppm) from the previous season's crop that was harvested approximately 50 DAT, but not in mature fruit (less than 0.001 ppm) harvested 370 DAT. ^{14}C PT807-HCl is extensively metabolized and readily eliminated by animals as indicated in a lactating goat study. A lactating goat was dosed with ^{14}C PT807-HCl once a day for 5 consecutive days at a target rate of 10 ppm in the diet. Approximately 100% of the total dose was recovered. Most of the radioactivity (approximately 100% of the total dose was recovered. Most of the radioactivity (approximately 93.8% of the administered dose) was excreted in the urine and approximately 5.6% of the dose was excreted in the feces. Tissues and milk contained less than 0.2% of the administered dose. Unchanged parent compound was not detected in any of the tissue. The rapid elimination of PT807-HCl and its metabolites coupled with the highly

exaggerated dose (approximately 3,600x the dietary burden) clearly indicates that no detectable residues of PT807-HCl will accumulate in milk and tissues.

7. *Metabolite toxicology*. PT807-HCl was rapidly excreted from the rat following oral administration. Approximately 70-80% of the administered dose as excreted from the urine and 10-20% was excreted from the feces. Minimal radioactive residue remained in the tissue. A small quantity of the unchanged parent ^{14}C PT807-HCl (M-14) was detected in urine and feces of the treated rats. The metabolism of PT807-HCl occurs through a variety of pathways, including oxidation, reduction, hydroxylation, deamination, N-dealkylation, and conjugation.

8. *Endocrine disruption*. No evidence of endocrine disruption, including estrogenic or anti-estrogenic activity was present in the animal studies. The developmental toxicity studies showed no effects suggesting endocrine disruption (e.g., change in fetal sex ratios, or malformed or altered reproductive organ development). Maturational delays were seen in both sexes of pups in the reproductive toxicity study at high dose levels; these findings correlated with the decreased body weight gain at these doses. There were no effects on anogenital distance, estrous cyclicity of adult females or on reproduction and fertility. F_O females at 2,000 and 4,000 ppm showed histopathological evidence of decreased cyclicity at weaning of their litters; no such findings were apparent in the F_1 females which were necropsied 1-2 weeks after weaning. The findings in the F_O females attributed to the combined stress of weaning and weight loss. As described below, high dose dogs given a dose exceeding an MTD and showing marked weight loss, showed evidence of maturational arrest of the germinal epithelium and absence of sperm in the epidydimides. All four high dose female dogs were in anestrus (as compared to two of the four control females). These findings are considered related to the marked weight loss and weight gain decrease in this study at the high dose level. No similar findings were seen in a chronic dog study at dose levels up to 5,000 ppm.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. There are no anticipated dietary exposures to PT807-HCl outside of those requested in this tolerance petition. The chronic dietary exposure from the consumption of oranges and its processed products, treated with PT807-HCl is very low. The exposure is only 0.5% of the reference dose (RfD) (0.000063 mg/kg/day) for the most high exposed population, children 1 to 6 years old. The dietary exposure is only 0.17% of the reference dose (RfD) (0.000021 mg/kg/day) for the U.S. population.

ii. *Drinking water*. There are no registered uses of PT807-HCl at this time; thus, the only potential source of residues in drinking water is this requested use on oranges. Available data suggest that PT807-HCl will not be a ground water contaminant because it does not exhibit the mobility or persistence characteristics of pesticides that are normally found in ground water. As a worst-case screen, GMJA specialties used EPA's GENEEC model to estimate drinking water risk, although GENEEC is an inappropriate model for the purpose because it was designed to estimate surface water runoff for ecological risk assessment purposes and greatly overestimates likely residues in surface water. Nevertheless, it is the model EPA currently is using to estimate drinking water exposure in order to assess aggregate risk.

Based on the results of the generic expected environmental concentration (GENEEC) model, the 56–day chronic EEC (calculated from the lowest K_{oc} value measured for PT807-HCl) is 0.315 µg/L. Using the standard drinking water consumption scenarios of 2 liters per day for a 70 kg adult and 1 liter per day for a 10 kg child, the calculated consumption of PT807-HCl in drinking water is 0.009 µg/kg/day for an adult and 0.032 µg/kg/day for a child. These consumption values correspond to 0.07% of the RfD for adults and 0.26% of the RfD for children ages 1 to 6 years old. As discussed above, drinking water concentrations calculated by the GENEEC procedure represent very conservative screening level assessments of drinking water exposure.

2. *Non-dietary exposure*. There are currently no registered uses for PT807-HCl, and therefore, there is no anticipated non-occupational exposure to the chemical.

D. Cumulative Effects

GMJA Specialities/Tropicana Products, Inc. is not aware of any currently registered products that are structurally similar to PT-807-HCl or that would be likely to share a common mechanism of action. Therefore, no cummulative exposures are considered in the PT807-HCl dietary risk assessment.

E. Safety Determination

1. *U.S. population*. The RfD was 0.0125 mg/kg/day based on a no observed adverse effect level (NOAEL) of 12.5 mg/kg/day and an uncertainty factor of 1,000. Although we do not believe there were any findings of concern in the toxicology studies that warrant a 1,000-fold safety factor, we used it as a very consecutive, worst-case screening value. NOAEL was obtained from the results of the rat reproduction study that showed developmental delay and decreased weight gain in pups at levels that were also toxic to adult rats.

2. *Infants and children*. The chronic dietary exposure from the consumption of oranges and its processed products treated with PT807-HCl is very low. The exposure is only 0.5% of the RfD (0.000063 mg/kg/day) for the most highly exposed sub-population, children 1 to 6 years old. The dietary exposure is only 0.17% of the RfD (0.000021 mg/kg/day) for the U.S. population.

F. International Tolerance

There are not Codex Maximum Residue Levels (MRLs) established for PT807-HCl.

2. Interregional Project Number 4

PP 9E3810, 9E3813, 0E3912, 9E5075, and 9E6061

EPA has received pesticide petitions (9E3810, 9E3813, 0E3912, 9E5075, and 9E6061) from the Interregional Project Number 4, Center for Minor Crop, Pest Management, Technology Centre of New Jersey, Rutgers University, 681 U.S. Highway No. 1 South, North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of esfenvalerate,(S)-cyano-(3-phenoxyphenyl)methyl(S)-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodities (RAC) as follows:

1. PP 9E3810 proposes the establishment of a tolerance for bok choy at 1.0 ppm. Registration will be limited to areas east of the Mississippi River based on the geographical representation of the residue data submitted to EPA.

2. PP 9E3813 proposes the establishment of a tolerance for sweet potatoes at 0.05 ppm.

3. PP 0E3912 proposes the establishment of a tolerance for cardoon at 1.0 ppm. Registration will be limited to California based on the geographical representation of the residue data submitted to EPA.

4. PP 9E5075 proposes the establishment of a tolerance for canola seed at 0.3 ppm.

5. PP 9E6061 proposes the establishment of a tolerance for brussels

sprout at 0.2 ppm for regional registration only.

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 are proposed for esfenvalerate based on the sum of all isomers.

EPA has determined that the petitions contain 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 petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by E.I. du Pont Nemours and Company, Agricultural Products, Wilmington, Delaware 19898.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism and chemical nature of residues of esfenvalerate in plants is adequately understood. The fate of fenvalerate has been extensively studied using radioactive tracers in plant metabolism/nature of the residue studies previously submitted to the Agency. These studies have demonstrated that the parent compound is the only residue of toxicological significance. The registrant has concluded that the qualitative nature of the residue is the same for both fenvalerate and esfenvalerate.

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

3. *Magnitude of residues*. The following tolerances have been proposed: cardoon at 1.0 ppm, bok choy at 1.0 ppm, sweet potatoes at 0.05 ppm, canola at 0.3 ppm, and brussels sprout at 0.2 ppm. Magnitude of residue studies support the proposed tolerances.

B. Toxicological Profile

1. *Acute toxicity*. A battery of acute toxicity studies places technical esfenvalerate in Toxicity Category II (Warning) for acute oral toxicity rat lethal dose (LD_{50} 87.2 mg/kg), Category III (Caution) for acute dermal (rabbit LD_{50} > 2,000 mg/kg) and primary eye irritation (mild irritation in rabbits), and Category IV (Caution) for primary skin irritation (minimal skin irritation in rabbits that reversed within 72 hours after treatment). Acute inhalation on technical grade active ingredient (a.i.) was waived due to negligible vapor pressure. A dermal sensitization test on esfenvalerate in guinea pigs showed no sensitization.

2. *Genotoxicity*. Esfenvalerate was not mutagenic in reverse mutation assays in *S. typhimurium* and *E. Coli* and did not induce mutations Chinese hamster V79 cells or chromosome aberrations in Chinese hamster ovary (CHO) cells. Esfenvalerate did not induce micronuclei in bone marrow of mice given up to 150 mg/kg intraperitoneally. Esfenvalerate did not induce unscheduled DNA synthesis (UDS) in HeLa cells. 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.

3. *Reproductive and developmental toxicity*. Esfenvalerate was administered to pregnant female rats by gavage in a pilot developmental study at doses of 0, 1, 2, 3, 4, 5, or 20 mg/kg/day and a main study at 0, 2.5, 5, 10, or 20 mg/kg/day. Maternal clinical signs (abnormal gait and mobility) were observed at 2.5 mg/kg/day and above. A no observed adverse effect level (NOAEL) of 2 mg/kg/day was established for the pilot study. The developmental NOAEL was > 20 mg/kg/day.

Esfenvalerate was administered by gavage to pregnant female rabbits in a pilot developmental study at doses of 0, 2, 3, 4, 4.5, 5, or 20 mg/kg/day and a main study at doses of 0, 3, 10, or 20 mg/kg/day. Maternal clinical signs (excessive grooming) were observed at 3 mg/kg/day and above. A maternal NOAEL of 2 mg/kg/day was established on the pilot study. The developmental NOAEL was > 20 mg/kg/day.

A 2-generation feeding study with esfenvalerate was conducted in the rat at dietary levels of 0, 75, 100, or 300 ppm. Skin lesions and minimal (non-biologically significant) parental body weight effects occurred at 75 ppm. The NOAEL for reproductive toxicity was 75 ppm (4.2-7.5 mg/kg/day) based on decreased pup weights at 100 ppm.

4. *Subchronic toxicity*. Two 90–day feeding studies with esfenvalerate were conducted in rats, one at 50, 150, 300, or 500 ppm esfenvalerate, and a second at 0, 75, 100, 125, or 300 ppm to provide additional dose levels. The NOAEL was 125 ppm (6.3 mg/kg/day) based on clinical signs (jerky leg movements) observed at 150 ppm (7.5 mg/kg/day) and above.

A 90–day feeding study in mice was conducted at 0, 50, 150, or 500 ppm esfenvalerate with a NOAEL of 150 ppm (30.5 mg/kg) based on clinical signs of toxicity at 500 ppm (106 mg/kg).

A 21–day dermal study in rabbits with fenvalerate conducted at 100, 300, or 1,000 mg/kg/day with a NOAEL of 1,000 mg/kg/day.

5. *Chronic toxicity*. In a 1–year study, dogs were fed 0, 25, 50, or 200 ppm esfenvalerate with no treatment related effects at any dietary level. The NOAEL was 200 ppm (5 mg/kg/day). An effect level for dietary administration of esfenvalerate for dogs of 300 ppm had been established earlier in a 3–week pilot study used to select dose levels for the chronic dog study.

One chronic study with esfenvalerate and three chronic studies with fenvalerate have been conducted in mice.

In an 18–month study, mice were fed 0, 35, 150, or 350 ppm esfenvalerate. Mice fed 350 ppm were sacrificed within the first 2 months of the study after excessive self-trauma related to skin stimulation and data collected were not used in the evaluation of the carcinogenic potential of esfenvalerate. The NOAEL was 35 ppm (4.29 and 5.75 mg/kg/day for males and females, respectively) based on lower body weight and body weight gain at 150 ppm. Esfenvalerate did not produce carcinogenicity.

In a 2–year feeding study, mice were administered 0, 10, 50, 250, or 1,250 ppm fenvalerate in the diet. The NOAEL was 10 ppm (1.5 mg/kg/day) based on granulomatous changes (related to fenvalerate only, not esfenvalerate) at 50 ppm (7.5 mg/kg/day). Fenvalerate did not produce carcinogenicity.

In an 18–month feeding study, mice were fed 0, 100, 300, 1,000, or 3,000 ppm fenvalerate in the diet. The NOAEL is 100 ppm (15.0 mg/kg/day) based on fenvalerate-related microgranulomatous changes at 300 ppm (45 mg/kg/day). No compound related carcinogenicity occurred.

Mice were fed 0, 10, 30, 100, or 300 ppm fenvalerate for 20 months. The NOAEL was 30 ppm (3.5 mg/kg/day) based on red blood cell effects and granulomatous changes at 100 ppm (15 mg/kg/day). Fenvalerate was not carcinogenic at any concentration tested.

In a 2–year study, rats were fed 1, 5, 25, or 250 ppm fenvalerate. A 1,000 ppm group was added in a supplemental study to establish an effect level. The NOAEL was 250 ppm (12.5 mg/kg/day). At 1,000 ppm (50 mg/kg/day), hind limb weakness, lower body weight, and higher organ-to-body

weight ratios were observed. Fenvalerate was not carcinogenic at any concentration.

EPA has classified esfenvalerate in Group E - evidence of noncarcinogenicity for humans.

6. *Animal metabolism*. After oral dosing with fenvalerate, the majority of the administered radioactivity was eliminated in the initial 24 hours. The metabolic pathway involved cleavage of the ester linkage followed by hydroxylation, oxidation, and conjugation of the acid and alcohol moieties.

7. *Metabolite toxicology*. The parent molecule is the only moiety of toxicological significance appropriate for regulation in plant and animal commodities.

8. *Endocrine disruption*. Estrogenic effects have not been observed in any studies conducted on fenvalerate or esfenvalerate. In subchronic or chronic studies there were no lesions in reproductive systems of males or females. In the recent reproduction study with esfenvalerate, full histopathological examination of the pituitary and the reproductive systems of males and females was conducted. There were no compound-related gross or histopathological effects. There were also no compound-related changes in any measures of reproductive performance including mating, fertility, or gestation indices or gestation length in either generation. There have been no effects on offspring in developmental toxicity studies.

C. Aggregate Exposure

1. *Dietary exposure*. Tolerances have been established for the residues of fenvalerate/esfenvalerate, in or on a variety of agricultural commodities. For purposes of assessing dietary exposure, chronic and acute dietary assessments have been conducted using all existing and pending tolerances for esfenvalerate. EPA recently reviewed the existing toxicology data base for esfenvalerate and selected the following toxicological endpoints. For acute toxicity, EPA established a NOAEL of 2.0 mg/kg/day from rat and rabbit developmental studies based on maternal clinical signs at higher concentrations. A margin of exposure (MOE) of 100 was required for chronic toxicity. EPA established the chronic population adjusted dose (cPAD) for esfenvalerate at 0.02 mg/kg/day. This cPAD was also based on the NOAEL of 2.0 mg/kg/day in the rat developmental study with an uncertainty factor of 100. Esfenvalerate is classified as a Group E carcinogen - no evidence of carcinogenicity in either rats or mice. Therefore, a carcinogenicity risk analysis for humans is not required.

i. *Food*. A chronic dietary exposure assessment was conducted using Novigen's Dietary Exposure Estimate Model (DEEM). Anticipated residues and adjustment for percent crop treated were used in the chronic dietary risk assessment. The percentages of the cPAD utilized by the most sensitive sub-population, children 1–6 years old, was 4.6% based on a daily dietary exposure of 0.000911 mg/kg/day. Chronic exposure for the overall U.S. population was 1.9% of the cPAD based on a dietary exposure of 0.000376 mg/kg/day. Results of the chronic dietary risk assessment adding cardoon, bok choy, sweet potatoes, canola, and brussels sprout had no significant effect on chronic dietary exposure when compared to the previous chronic dietary risk assessment. EPA has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Potential acute exposures from food commodities were estimated using a Tier 3 (Monte Carlo) Analysis and appropriate processing factors for processed food and distribution analysis. This analysis used field trial data to estimate exposure, and federal and market survey information to derive the percent of crop treated. Regional consumption information was taken into account. The MOEs for the most sensitive sub-population (children 1–6 years old) were 202 and 103 at the 99th, and 99.9th percentile of exposure, respectively, based on daily exposures of 0.009914 and 0.019390 mg/kg/day. The MOEs for the general population are 355 and 171 at the 99th and 99.9th percentile of exposure, respectively, based on daily exposure estimates of 0.005638 and 0.011710 mg/kg/day. The registrant has stated there is no cause for concern if total acute exposure calculated for the 99.9th percentile yields an MOE of 100 or larger. This acute dietary exposure estimate is considered conservative and EPA considered the MOEs adequate in a recent Final Rule (62 FR 63019) (FRL 5754-6) November 26, 1997.

ii. *Drinking water*. Esfenvalerate is immobile in soil and will not leach into ground water. Due to the insolubility and lipophilic nature of esfenvalerate, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore, not contributing to potential dietary exposure from drinking water.

A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM). 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) (ppb).

Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using Standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would be treated before consumption.

Chronic drinking water exposure was estimated to be 0.000001 mg/kg/day for both the United States general population and for non-nursing infants. Less than 0.1% of the cPAD was occupied by both population groups.

Using these values, the contribution of water to the acute dietary risk estimate was estimated for the U.S. population to be 0.000019 mg/kg/day at the 99th percentile and 0.000039 mg/kg/day at the 99.9th percentile resulting in MOEs of 105,874 and 51,757, respectively. For the most sensitive subpopulation, non-nursing infants less than 1–year old, the exposure is 0.000050 mg/kg/day and 0.000074 mg/kg/day at the 99th and 99.9th percentile, respectively, resulting in MOEs of 39,652 and 27,042, respectively.

Therefore, the registrant concludes that there is reasonable certainty of no harm from drinking water.

2. *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 a.i. 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.

To assess risk from (nonfood) short- and intermediate-term exposure, the registrant selected a toxicological endpoint of 2.0 mg/kg/day, the NOAEL from the rat and rabbit developmental studies. For dermal penetration/

absorption, the registrant selected 25% dermal absorption based on the weight-of-evidence available for structurally related pyrethroids. For inhalation exposure, the registrant used the oral NOAEL of 2.0 mg/kg/day and assumed 100% absorption by inhalation.

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. The total potential short- and intermediate-term aggregate non-dietary exposure including lawn, carpet, and pet uses are: 0.000023 mg/kg/day for adults, 0.00129 mg/kg/day for children 1-6 years old and 0.00138 mg/kg/day for infants less than 1–year old.

EPA concluded November 26, 1997 (62 FR 63019)(FRL 5754–6) that the potential non-dietary exposure for esfenvalerate are associated with substantial margins of safety.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' In a recent Final Rule on esfenvalerate (62 FR 63019), EPA concluded, ''Available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanism 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 mechanisms 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 less concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include those 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 a 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 for the purpose of this tolerance action, the registrant has not assumed that esfenvalerate has a common mechanism of toxicity with other substances.

E. Safety Determination

Both the chronic and acute toxicological endpoints are derived from maternal NOAELs of 2.0 mg/kg/day in developmental studies in rats and rabbits. There were no fetal effects. In addition, no other studies conducted with fenvalerate or esfenvalerate indicate that immature animals are more sensitive than adults. Therefore, the registrant concludes that the safety factor used for protection of adults is fully appropriate for the protection of infants and children. No additional safety factor is necessary as described below.

1. *U.S. population*. A chronic dietary exposure assessment using anticipated residues, monitoring information, and percent crop treated indicated the percentage of the cPAD utilized by the general population to be 1.9%. There is generally no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

For acute exposure, a MOE greater than 100 is considered adequate. A Tier 3 acute dietary exposure assessment found the general population to have MOEs of 355 and 171 at the 99th and 99.9th percentile of exposure, respectively. These values were generated using actual field trial residues and market share data for percentage of crop treated. These results depict an accurate exposure pattern at an exaggerated daily dietary exposure rate.

Short- and intermediate-term aggregate exposure risk from chronic dietary food and water plus indoor and outdoor residential exposure for the U.S. population is an exposure of 0.0082 mg/kg/day with an MOE of 244. Therefore, the registrant concludes that there is a reasonable certainty that no harm will result from chronic dietary, acute dietary, non-dietary, or aggregate exposure to esfenvalerate residues.

2. *Infants and children*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children unless EPA determines that a different margin of safety will be safe for infants and children. EPA has stated that reliable data supports the use of the standard MOE and uncertainty factor (100 for combined interspecies and intraspecies 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. In a recent final rule (62 FR 63019), EPA concluded that reliable data support use of the standard 100-fold uncertainty factor for esfenvalerate, and that an additional uncertainty factor is not needed to protect the safety of infants and children. This decision was based on no evidence of developmental toxicity at doses up to 20 mg/kg/day (10 times the maternal NOAEL) in prenatal developmental toxicity studies in both rats and rabbits; offspring toxicity only at dietary levels which were also found to be toxic to parental animals in the 2–generation reproduction study; and no evidence of additional sensitivity to young rats or rabbits following prenatal or postnatal exposure to esfenvalerate.

A chronic dietary exposure assessment found the percentages of the cPAD utilized by the most sensitive sub-population to be 4.6% for children 1-6 years old based on a dietary exposure of 0.000911 mg/kg/day. The percent cPAD for nursing and non-nursing infants was 1.1% and 2.7%, respectively. The registrant has no cause for concern if cPADs are below 100%.

The most sensitive sub-population, children 1-6 years old, had acute dietary MOEs of 202 and 103 at the 99th and 99.9th percentile of exposure, respectively. Nursing infants had MOEs of 198 and 146 at the 99th and 99.9th percentile of exposure, respectively. Non-nursing infants had MOEs of 300 and 156 at the 99th and 99.9th percentile of exposure, respectively. The registrant has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger.

The potential short- or intermediate-term aggregate exposure of esfenvalerate from chronic dietary food and water 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. Thus, the registrant concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to esfenvalerate residues (62 FR 63019).

F. International Tolerances

There are no Codex MRL values established for fenvalerate on cardoon, bok choy, sweet potatoes, canola, brussels sprout, and rapeseed; therefore, no harmonization is required.

[FR Doc. 99–29184 Filed 11–9–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00625; FRL–6388–8]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of availability.

SUMMARY: To assure that EPA's policies related to implementing the Food Quality Protection Act are transparent and open to public participation, EPA is soliciting comments on the pesticide draft science policy paper entitled ''Guidance for Performing Aggregate Exposure and Risk Assessments.'' This notice is the thirteenth in a series concerning science policy papers related to Food Quality Protection Act and the Tolerance Reassessment Advisory Committee.
DATES: Comments for the draft science policy paper, identified by docket control number OPP–00625, must be received on or before January 10, 2000.
ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00625 in the subject line on the first page of your response.
FOR FURTHER INFORMATION CONTACT: Carol Christensen, Environmental Protection Agency (7505C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–6230; fax: (703) 305–7147; e-mail: christensen.carol@epa.gov.
SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, the draft science policy paper, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page select ''FQPA'' and then look up the entry for this document under ''Science Policies.'' You can also go directly to the listings at the EPA Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under ''**Federal Register**--Environmental Documents.'' You can go directly to the **Federal Register** listings http://www.epa.gov/fedrgstr/.

2. *Fax on demand*. You may request a faxed copy of the draft science policy paper, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6043 for the paper entitled ''Guidance for Performing Aggregate Exposure and Risk Assessments.'' You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00625. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00625 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information

and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00625. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the various draft science policy papers, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide solid technical information and/or data to support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate.

5. Indicate what you support, as well as what you disagree with.

6. Provide specific examples to illustrate your concerns.

7. Make sure to submit your comments by the deadline in this notice.

8. At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00625 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background for the Tolerance Reassessment Advisory Committee

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met six times as a full committee from May 27, 1998 through April 29, 1999.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA has been issuing a series of draft papers concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of the draft science policy paper as identified in the ''SUMMARY.''

III. Summary of ''Guidance for Performing Aggregate Exposure and Risk Assessments''

Pesticides are regulated under both FIFRA and FFDCA. In 1996, Congress passed FQPA which amended both FIFRA and FFDCA. Through these laws,

EPA evaluates risks posed by the use of each pesticide to make a determination of safety. FQPA amended FFDCA to require the Agency to consider aggregate exposure. Section 408(b)(2)(ii) requires EPA to find for each tolerance ''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.'' Section 408(b)(2)(C)(ii)(I) requires the Agency to find ''a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues . . . .'' Finally, Section 408(b)(2)(D)(vi) directs EPA, when deciding on tolerances, to consider ''aggregate exposure levels...to the pesticide chemical residue . . . including dietary exposure and exposure from other non-occupational sources.''

Implementation of FQPA has led to refinement of many decision tools, including methods for assessment of aggregate exposure and risk. The methods described in this paper increase the completeness and realism of EPA's estimates of potential exposures to pesticides in the environment. The Agency believes that these new assessment methods will substantially improve protection of public health.

This draft science policy paper builds on the Interim Approach Paper for the March 1997 Scientific Advisory Panel (USEPA, 1997c.) It is one in a series of science policy papers developed to address new requirements imposed by FQPA. It also relies heavily on the following documents:

1. Exposure Factors Handbook.
2. Residential SOPs.
3. Interim Guidance for Conducting Aggregate Exposure and Risk Assessments.
4. Guidance for Submission of Probabilistic Human Health Exposure Assessments to the Office of Pesticide Programs.

An earlier draft of this science policy paper was reviewed by the FIFRA SAP in February 1999. The Panel's comments and recommendations were considered in this revision.

This draft science policy paper describes the general principles and specific procedure for assessing aggregate non-occupational human exposure and risk from a single chemical by all relevant pathways. The routes and pathways considered at this time are oral (from food, drinking water, and residential scenarios), inhalation (residential pathway), and dermal (residential pathway). EPA recognizes the gaps in understanding the interdependencies and linkages between and among exposure pathways when assessing exposure to an individual, and that further data collection is warranted in this area.

Currently, EPA combines single point estimates from the relevant pathways to assess aggregate exposure. Under EPA's current interim guidelines, for example, point estimates for drinking water and residential exposure pathways are typically added to a point (such as the 99.9th percentile) selected from the distribution of dietary exposures. This draft science policy paper proposes a different approach. Under these new guidelines an analyst first assesses exposure by all pathways for one individual at a time; then the analyst combines individual assessments into an overall assessment of exposures of a sample population of interest. This method keeps each individual's characteristics consistent; all exposures agree in time and place; and all individual demographic characteristics are consistent and reasonable. Using this approach an assessor can create a distribution of total exposures to many individuals in a population of interest, while retaining inter- and intra-individual variability. And, analysis of distributional data can improve understanding, and even allow quantification of the uncertainty and variability in the data sets. EPA believes that these proposed changes to the performance of aggregate exposure and risk assessment will lead to better and more realisitic assessments of actual exposure and risk.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the draft science policy paper, OPP is particularly interested in comments on the following questions and issues:

1. The draft science policy paper describes methodologies for assessing pesticide risks from single exposure pathways (food, residential and drinking water). Are these methodologies complete and satisfactorily described, or are changes/additions recommended?

2. The draft science policy paper describes a process for combining pesticide exposures and risk from multiple routes for a given pathway of exposure. Is the process, as described, logical, scientifically defensible, and complete?

3. A basic concept underlying the draft aggregate exposure and risk assessment methodology is that of the individual being exposed through calendar time with all model parameters referring back to that specific individual. Is use of this fundamental principle as the basis for the aggregate exposure and risk methodology appropriate and, if not, how should it be modified?

4. The draft science policy paper acknowledges the need to understand how exposures co-occur. OPP is developing standards to identify co-dependencies and inter-relationships between events, and recognizes that product marketing data may be available to aid in this task. Are there any suggestions on how OPP can best evaluate and incorporate into its assessments co-occurrences of exposure events?

5. During an aggregate exposure and risk assessment, some specific exposure scenarios may be identified as having a minimal contribution to the total aggregate risk. Is it appropriate to exclude specific exposure scenarios that contribute minimally to the total aggregate risk, and if so, at what risk level should an exposure scenario be dropped from further consideration?

6. In certain cases and with certain pathways, it may not be necessary, advisable, or even possible to develop probabilistic exposure estimates and OPP may simply rely on deterministic (or point) estimates of a pathway-specific exposure instead. When aggregating, it will be necessary to combine the pathway-specific exposure estimates to develop an estimate of aggregate exposure. Is OPP's general approach to combining deterministic and probabilistic exposure estimates appropriate? If not, how should it be modified?

7. The draft science policy paper describes three methods for combining risks from the three routes (oral, dermal, and inhalation). The Total MOE (MOET) and the Aggregate Risk Index (ARI) are currently being used by OPP. Should OPP continue to use these approaches or should OPP consider using the other described approach?

V. Policies Not Rules

The draft science policy paper discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances

surrounding a specific risk assessment demonstrate that a policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting any policy document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of each guidance document.

The ''revised'' guidance will not be unalterable. Once a ''revised'' guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of inviting comment on each guidance document, EPA would welcome comments that specifically address how a guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: October 29, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–29296 Filed 11–9–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00577A; FRL–6389–7]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of the revised version of the pesticide science policy document entitled ''Estimating the Drinking Water Component of a Dietary Exposure Assessment.'' This notice is the fourteenth in a series concerning science policy documents related to the Food Quality Protection Act and developed through the Tolerance Reassessment Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Nelson Thurman or Sid Abel, Environmental Protection Agency (7506C), 401 M St., SW., Washington, DC 20460; telephone numbers: (703) 308–0465 or (703) 305–7346; fax: (703) 305–6309; e-mail: thurman.nelson@epa.gov and abel.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, the science policy documents, and certain other related documents that might be available electronically, from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page select ''FQPA'' and then look up the entry for this document under ''Science Policies.'' You can also go directly to the listings at the EPA Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry to this document under ''**Federal Register** -- Environmental Documents.'' You can go directly to the **Federal Register** listings http://www.epa.gov/fedrgstr/.

2. *Fax on demand*. You may request to receive a faxed copy of the revised science policy paper, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6044 for the paper entitled ''Estimating the Drinking Water Component of a Dietary Exposure Assessment.'' You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00577A. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background for the Tolerance Reassessment Advisory Committee (TRAC)

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data

supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the TRAC, chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met six times as a full committee from May 27, 1998 through April 29, 1999.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas it believes were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA is announcing through the **Federal Register** the availability of a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. After receiving and reviewing comments from the public and others, EPA is also issuing revised science policy documents which reflect changes made in response to comments. In addition to comments received in response to these **Federal Register** notices, EPA will consider comments received during the TRAC meetings. Each of these issues is evolving and in a different stage of refinement. Accordingly, as the issues are further refined by EPA in consultation with USDA and others, they may also be presented to the SAP.

III. Summary of Revised Science Policy Guidance Document

This **Federal Register** notice announces the availability of a revised version of the Office of Pesticide Programs' (OPP) science policy guidance document that has been re-titled ''Estimating the Drinking Water Component of a Dietary Exposure Assessment.'' This science policy paper describes changes in OPP's approach to estimating pesticide concentrations in drinking water as part of its assessment of dietary exposures to pesticides. This document was developed from the science policy paper entitled ''Science Policy 5: Estimating the Drinking Water Component of a Dietary Exposure Assessment (12/22/98 Draft),'' that was released for public comment on January 4, 1999 (64 FR 162) (FRL–6054–8). The Agency received comments from various organizations. Each of the commentors offered recommendations for improving the science policy. All comments were extensively evaluated and considered by the Agency. This revised version embodies many recommendations of the commentors, as well as recommendations from a May 1999 FIFRA Scientific Advisory Panel which evaluated the proposed approach for incorporating a ''crop area adjustment factor'' along with a drinking water reservoir scenario in the Agency's surface water screening models. The public comments, as well as a detailed summary of the Agency's response to the comments are also available in the docket for this notice.

For some time the Agency has been using screening models to estimate pesticide concentrations in ground water and surface water to identify those food-use pesticides that are not expected to contribute enough exposure via drinking water to result in unacceptable levels of aggregate risk. The Agency uses monitoring data, where available and reliable, to refine its assessments in those cases where the use of the screening models does not result in ''clearing'' (i.e., indicate a low risk) the pesticide from a drinking water perspective. This paper's description of the models and approaches EPA generally intends to follow is not meant to restrict interested parties from commenting on the appropriateness of these models and approaches, either generally or in regard to a specific application, or from proposing new or different models or approaches.

In response to public comments, OPP made a number of significant changes to its drinking water assessment approaches, primarily to refine existing screening methods for identifying pesticides which may be present in drinking water at levels of concern. These refinements will enable OPP to more accurately determine whether a pesticide has the potential to result in significant risks to the public and sensitive populations such as infants and children. Specifically, in 1999, OPP will change its screening level drinking water assessment by replacing the ''farm field pond'' scenario in its surface water screening models with a ''drinking water reservoir'' scenario and will begin incorporating into the model a factor to account for the area surrounding the reservoir that is cropped. To start, percent cropped area factors will be used for corn, soybeans, cotton, and wheat. Additional factors for other major crops will be added in late 1999 and early 2000. These changes will improve EPA's initial screening assessment by making it more accurate. The Agency is also evaluating several watershed-scale surface water models for use in future drinking water assessments.

EPA will also continue to use SCI-GROW (Screening Concentration In GROund Water) as an initial screening model for ground water sources of drinking water. An evaluation of models and procedures for a second-tier assessment of pesticide exposure in ground water is beginning. In the meantime, the Agency will rely on ground water monitoring studies to estimate concentrations in ground water for those pesticides which do not pass through the SCI-GROW screen.

The Agency believes its risk assessments would be strengthened by additional monitoring data and is working on a number of levels to fill in the gaps in monitoring data and acquire more high quality data on pesticide concentrations in drinking water sources. Efforts range from requesting monitoring and runoff studies on

individual pesticides to working with the U.S. Geological Survey (USGS) to obtain more regional- and national-scale monitoring data on multiple pesticides to exploring design considerations for a national survey of pesticides in drinking water with various government agencies and industry groups and associations.

Also as a result of the comments, OPP has identified two issues regarding drinking water that will be addressed in separate science policy papers within the next 6 months. EPA plans to issue papers on the following issues: (1) approaches for utilizing available data and models to develop quantitative estimates of pesticide concentrations in drinking water and estimates of people exposed for pesticides which pose a particularly high potential for contaminating drinking water; and (2) the effectiveness of water treatment in reducing pesticide levels in drinking water and an approach for addressing treatment issues in the assessment process.

IV. Issues Raised in Comments

EPA published a draft version of the document described in Unit III. on January 4, 1999 (64 FR 162) and comments were filed under docket control number OPP–00577. The public comment period ended on February 26, 1999. The Agency received comments from eight different organizations. All comments were considered by the Agency in revising the document.

Many of the comments were similar in content, and pertained to general issues concerning the proposed policy or specific sections within the draft document. The comments addressed a broad range of issues and, in many instances, provided no general consensus. These differences in opinion highlight the difficulties the Agency faces in improving its existing science-based policy for estimating pesticide concentrations in drinking water. The Agency grouped the comments according to the nature of the comment and the issue or section of the document which they addressed. For the substantive comments that follow, contrasting opinions are presented, along with EPA's response. The full text of the Agency's comments and response to the comments document is available as described in Unit I.B.1.

V. Policies Not Rules

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

List of Subjects

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

Dated: November 2, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–29451 Filed 11–9–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6473–4]

Draft Guidance for Improving Air Quality Through Economic Incentive Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the draft guidance for States that wish to use an economic incentive program (EIP) to achieve air quality improvements (62 FR 50086, September 15, 1999). The draft guidance, ''Draft Economic Incentive Program Guidance'' (EPA–452/D–99–001, September 1999), is a comprehensive update of EPA's 1994 EIP rule and guidance (59 FR 16690, April 7, 1994). It also incorporates some components of EPA's 1995 proposed model rule for open market trading (60 FR 39668, August 3, 1995, and 60 FR 44290, August 25, 1995), as well as comments received on that proposed rule.

DATES: Written comments on this draft must be received on or before December 10, 1999.

ADDRESSES: Submit written comments on this proposal (two copies are preferred) to: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M–1500, U.S. Environmental Protection Agency, Attention: Docket No. A–99–27, 401 M Street, SW, Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays, excluding legal holidays, and a reasonable fee may be charged for copying. The Air Docket may be called at (202) 260–7548. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect file format (version 6.1 or earlier versions) or ASCII file format. All comments and data in electronic form must be identified by the docket number A–99–27. Electronic comments on this draft may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Mayer, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5390, e-mail mayer.nancy@epa.gov; or Mr. Eric L. Crump, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–4719, e-mail crump.eric@epa.gov.

SUPPLEMENTARY INFORMATION: To allow sufficient time to review the draft guidance for improving air quality through economic incentive programs before submitting comments, EPA is extending the public comment period on this proposal from September 15, 1999 to December 10, 1999.

Electronic Availability

You can obtain electronic copies of the draft EIP guidance for review and comment from the OAR Policy and Guidance section of EPA's Technology Transfer Network Website (TTNWeb). The Uniform Resource Location (URL) for the home page of the web site is http://www.epa.gov/ttn/oarpg. You can find the draft EIP guidance on this web site under the heading titled ''What's New.'' If you need additional assistance with these web sites, call the TTNWeb Helpline at (919) 541–5384.

Dated: November 1, 1999.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 99–29444 Filed 11–9–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following

agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 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.: 203–011383–029.

Title: Venezuelan Discussion Agreement.

Parties:

Columbus Line
Nordana Line
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
Venezuelan Container Line C.A.
Lykes Lines Limited, LLC
American President Lines, Ltd.
Seaboard Marine Ltd.
Crowley American Transport, Inc.
King Ocean Services, S.A.
SeaFreight Line

Synopsis: The proposed amendment would delete obsolete references to conference agreement parties, it would also conform the Agreement's space charter provisions to reflect current Commission requirements, and would authorize the parties to adopt voluntary guidelines relating to the terms and conditions of service contracts.

Agreement No.: 217–011657–001.

Title: The Zim/Italia-D'Amico Space Charter Agreement.

Parties:

Zim Israel Navigation Company Ltd.
Italia d'Navigazione S.p.A.
D'Amico Societa di Navigazione S.p.A.

Synopsis: The proposed amendment would expand the Agreement's geographic scope to include Greece and Colombia and would further revise the Agreement to reflect the understanding of the parties with respect to these newly-added countries.

Agreement No.: 217–011680.

Title: The Zim/CAGEMA Space Charter Agreement

Parties:

Zim Israel Navigation Company Limited (''Zim'')
Caribbean General Maritime Limited (''CAGEMA'')

Synopsis: The proposed Agreement would permit Zim to charter space to CAGEMA on an as needed/as available basis in the trade from Miami, Florida to Kingston, Jamaica.

By Order of the Federal Maritime Commission.

Dated: November 5, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–29483 Filed 11–9–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding revocation Dates shown below:

License Number: 4372.
Name: A 2 Z International Trading, Inc. d/b/a A 2 Z Auto Sales.
Address: 185 East Airport Boulevard, Sanford, FL 32773.
Date Revoked: July 7, 1999.
Reason: Failed to maintain a valid bond.

License Number: 3781.
Name: Calbac, Inc.
Address: 2840 North 73rd Avenue, P.O. Box 841309, Hollywood, FL 33084–3309.
Date Revoked: September 22, 1999.
Reason: Surrendered License voluntarily.

License Number: 3160.
Name: Glad Freight Int'l, Inc.
Address: 8249 N.W. 36th Street, Suite 106, Miami, FL 33166.
Date Revoked: July 19, 1999.
Reason: Surrendered License voluntarily.

License Number: 1967.
Name: Vandon Incorporated d/b/a International Port Services.
Address: 1319 Campbell Road, Suite 107, Houston, TX 77055.
Date Revoked: September 30, 1999.
Reason: Surrendered License voluntarily.

T.A. Zook,

Deputy Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–29485 Filed 11–9–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Safeway Transport Co., Inc., 600 Meadowlands Parkway, Suite 147, Secaucus, NJ 07094

Officer: Hedi Hamedani, President (Qualifying Individual)

Caribbean Cargo Inc., 171 Powell Avenue, Brooklyn, NY 11212

Officer: Allan Browne, President (Qualifying Individual)

Solex Logistics Inc., 11222 South La Cienega Blvd., Suite 205, Inglewood, CA 90304

Officers: Wu Ping Hsieh (Bill Hsieh), President (Qualifying Individual), Chao Yuan Su, Secretary

Trans-Aero-Mar Inc., 1203 N.W. 93rd Ct., Miami, FL 33172

Officers: Luis G. Rangel, President (Qualifying Individual), Pedro M. Rangel, Vice President

Walsh C.H.B., Inc., 515 Rockaway Avenue, Valley Stream, NY 11581

Officer: William J. Walsh, President (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

RSI Relo, Inc. d/b/a Relocation Services, International, 2440 Grand Avenue, Suite A, Vista, CA 92083

Officer: Andrew C. Churchill, President (Qualifying Individual)

Johnston International Services, Corp., 74 Rumson Court, Smyrna, GA 30080

Officers: Thomas M. Johnston, President (Qualifying Individual), Susan M. Johnston, Vice President

Dated: November 5, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–29484 Filed 11–9–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition P5–99]

Petition of A.P. Moller-Maersk Line for an Exemption From the Notice Requirement of 46 CFR 530.9; Notice of Filing of Petition

Notice is hereby given that, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. § 1715, A.P. Moller-Maersk Line (''Petitioner'') has petitioned for an exemption to the notice requirements of 46 CFR 530.9. Petitioner states it soon will acquire the international liner business of Sea-Land Service, Inc., and will operate under the name A.P. MOLLER-MAERSK SEA-LAND. As a result, Petitioner states that approximately 3,000 existing service contracts will be affected by the acquisition and name change. Petitioner requests an exemption from the requirement to file separate electronic notices of assignment for each service contract, and asks instead that it be permitted to file a single notice listing all of the service contracts that are assigned to it in whole or in part.

In order for the Commission to make a thorough evaluation of the petition for exemption, interested persons are requested to submit views or arguments in reply to the petition no later than November 24, 1999. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573–0001, and be served on counsel for Petitioner, Wayne R. Rhode, Esq., Sher & Blackwell, 1850 M Street, N.W., Washington, D.C.

Copies of the petition are available for examination at the Office of the Secretary of the Commission, 800 North Capitol Street, N.W., Room 1046, Washington, DC.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–29486 Filed 11–9–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Petition P4–99]

Petition of Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft Eggert & Amsinck for an Exemption From the Notice Requirement of 46 CFR 530.9; Notice of Filing of Petition

Notice is hereby given that, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. § 1715, Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft Eggert & Amsinck (''Petitioner'') has petitioned for an exemption to the notice requirements of 46 CFR 530.9. Petitioner states it soon will acquire certain assets of the international liner business of Crowley American Transport, Inc., and, consequently, approximately 250 to 300 service contracts entered into by Crowley will be assigned, either in whole or in part, to Petitioner. Petitioner asks that it be permitted to file a single notice listing all of the service contracts that are assigned to it rather than be subject to the existing requirement to file separate notices of assignment for each service contract.

In order for the Commission to make a thorough evaluation of the petition for exemption, interested persons are requested to submit view or arguments in reply to the petition no later than November 24, 1999. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, and be served on counsel for Petitioner, Wayne R. Rhode, Esq., Sher & Blackwell, 1850 M Street, NW, Washington, DC 20036.

Copies of the petition are available for examination at the Office of the Secretary of the Commission, 800 North Capitol Street, NW, Room 1046, Washington, DC.

Bryant L. Van Brakle,

Secretary.

[FR Doc. 99–29487 Filed 11–9–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 24, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Fitzhugh Holdings, Ripley, Tennessee; to acquire voting shares of Bancshares of Ripley, Inc., Ripley, Tennessee, and thereby indirectly acquire voting shares of Bank of Ripley, Ripley, Tennessee.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. David Coffelt, Creighton, Missouri; Harlan Limpus, Lake Winnebago, Missouri; Orvel Cooper, Teresa Miller, and Charles Taylor, all of Harrisonville, Missouri; to acquire voting shares of Citizens Agency, Inc., Haddam, Kansas, and thereby indirectly acquire voting shares of Citizens State Bank, Haddam, Kansas.

Board of Governors of the Federal Reserve System, November 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–29410 Filed 11–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than December 6, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Smith River Bankshares, Inc., Martinsville, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Smith River Community Bank, N.A.(in organization), Martinsville, Virginia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Pryor Bancorp, Inc., Pryor, Oklahoma; to acquire 80 percent of the voting shares of Locust Grove Bancshares, Inc., Locust Grove, Oklahoma, and thereby indirectly acquire Bank of Locust Grove, Locust Grove, Oklahoma, and Lakeside Bank of Salina, Salina, Oklahoma.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of First Place Financial Corporation, Farmington, New Mexico, and thereby indirectly acquire Capital Bank, Albuquerque, New Mexico; Western Bank, Gallup, New Mexico; First National Bank of Farmington, Farmington, New Mexico; and Burns National Bank of Durango, Durango, Colorado.

In connection with this application, Applicant also has applied to acquire FPFC Management LLC, Farmington, New Mexico, and thereby engage in community development investment activities, pursuant to § 225.28(b)(12) of Regulation Y.

Board of Governors of the Federal Reserve System, November 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–29411 Filed 11–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, November 15, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–29502 Filed 11–5–99; 4:34 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES).

Times and Dates: 8:30 a.m.–4:45 p.m., December 7, 1999; 8:30 a.m.–12:30 p.m., December 8, 1999.

Place: Elkhorn Resort, 1 Elkhorn Road, Sun Valley, Idaho 83354, telephone 208/622–4511, fax 208/622–3261.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE) and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction, and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include an update on the Pit 9/ICPP Cleanup from the Idaho State Oversight Committee; a presentation from Risk Assessment Corporation (RAC) on the Rocky Flats findings; a presentation on the response to the INEELHES' recommendations on Limited Dose Reconstructions from the National Center for Environmental Health, CDC; and an update on the Evaluation Work Group project.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Arthur J. Robinson, Jr., Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341-3724, telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: November 3, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–29407 Filed 11–9–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members on Public Advisory Panels or Committees; Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee (the Panel) in the Center for Devices and Radiological Health (CDRH). In this document, FDA is also requesting nominations for members to serve on the newly formed Panel.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Nominations should be received by January 10, 2000.

ADDRESSES: All nominations and curricula vitae, except for consumer-nominated and industry-nominated members, should be sent to Nancy J. Pluhowski (address below). All nominations and curricula vitae for the consumer-nominated members should be sent to Annette J. Funn (address below). All nominations for the industry-nominated members should be sent to Kathleen L. Walker (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except consumer-nominated and industry-nominated members: Nancy J. Pluhowski, Office of Device Evaluation (HFZ–400), CDRH, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

Regarding all nominations for consumer-nominated members: Annette J. Funn, Office of Consumer Affairs (HFE–88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5006.

Regarding all nominations for industry-nominated members: Kathleen L. Walker, Office of Systems and Management (HFZ–17), CDRH, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114.

SUPPLEMENTARY INFORMATION: The Panel was created on August 18, 1999. FDA is requesting nominations for members to serve on the new advisory panel. Persons nominated for membership should have expertise in the activity of the Panel as identified below.

Function

The function of the Medical Devices Dispute Resolution Panel is to provide advice to the Commissioner of Food and Drugs on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or agency decisions or actions.

Criteria for Members

Persons nominated for membership on the Panel shall be experts with broad, cross-cutting scientific, clinical, analytical or mediation skills. The term of office is up to 4 years.

The Panel will also include technically qualified members who are identified with consumer interests and representatives of industry interests.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the Panel. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude Panel membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

Criteria for Consumer–Nominated Members

Selection of members representing consumer interests is conducted through procedures that include use of a consortium of consumer organizations which has the responsibility for screening, interviewing and recommending candidates for the agency's selection. Candidates from this group, like all other candidates for membership on the Panel, should possess appropriate qualifications to understand and contribute to the Panel's work.

Industry Representatives

Regarding nominations for members representing industry interests, a letter will be sent to each person or organization that has made a nomination and to other organizations that have expressed an interest in participating in the selection process together with a complete list of all such organizations and the nominees. The letter will state that it is the responsibility of each nominator or organization that has expressed an interest in participating in the selection process to consult with the others to provide a consensus slate of possible members representing industry interests within 60 days. In the event that a slate of nominees has not been provided within 60 days, the agency will select an industry representative for each such vacancy from the entire list of industry nominees to avoid delay or disruption of the work of the Panel. The agency is particularly interested in nominees that possess the essential scientific credentials needed to participate fully and knowledgeably in the Panel's deliberations. In addition to this expertise, the agency believes that it would be an advantage to the Panel's work if the individual had special insight and direct experience into specific industry-wide issues, practices, and concerns that might not otherwise be available to others not similarly situated.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: November 2, 1999.

Linda S. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–29351 Filed 11–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the charters of the committees listed below for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed below. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the dates indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Technical Electronic Product Radiation Safety Standards Committee	December 24, 2000
Antiviral Drugs Advisory Committee	February 15, 2001
National Mammography Quality Assurance Advisory Committee	July 6, 2001
Nonprescription Drugs Advisory Committee	August 27, 2001

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4820.

Dated: November 3, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–29353 Filed 11–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues as provided in the Federal Food, Drug, and Cosmetic Act.

Date and Time: The meeting will be held on December 6, 1999, 9 a.m. to 6:30 p.m., and December 7, 1999, 8:30 a.m. to 3 p.m.

Location: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Veronica J. Calvin, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12514. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 6, 1999, the committee will discuss, make recommendations, and vote on a premarket approval application for a device indicated for frequent, automatic, and noninvasive monitoring of glucose levels in adults with diabetes. On December 7, 1999, the committee will discuss and make recommendations on general issues regarding over-the-counter devices for measurement of vaginal pH. The discussion will include appropriate claims, study designs to support claims, performance expectations, and labeling.

Procedure: On December 6, 1999, from 9 a.m. to 6:30 p.m., and on December 7, 1999, from 9 a.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 24, 1999. On December 6, 1999, oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m. and between approximately 5:15 p.m. and 5:45 p.m. On December 7, 1999, oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m. and between approximately 2 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 24, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On December 7, 1999, from 8:30 a.m. to 9 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to these products.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 2, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–29352 Filed 11–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Health Care Financing Administration

OIG/HCFA Special Advisory Bulletin on the Patient Anti-Dumping Statute

AGENCY: Office of Inspector General (OIG) and Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice, developed jointly by the OIG and HCFA, sets forth the Special Advisory Bulletin addressing requirements of the patient anti-dumping statute and the obligations of hospitals to medically screen all

patients seeking emergency services and provide stabilizing medical treatment as necessary to all patients, including enrollees of managed care plans, whose conditions warrant it. In developing this Special Advisory Bulletin, our goal is to provide clear and meaningful advice with regard to the application of the anti-dumping provisions, and to ensure greater public awareness of hospitals' obligations in providing emergency medical services to those individuals insured by managed care plans.

FOR FURTHER INFORMATION CONTACT: Robin Schneider, Office of Counsel to the Inspector General, (202) 619–1306.

SUPPLEMENTARY INFORMATION:

Background

In an effort to identify and eliminate fraud, waste and abuse in the Department's health care programs, the OIG periodically develops and issues Special Fraud Alerts and, with the cooperation of HCFA, Advisory Bulletins to alert health care providers and program beneficiaries about potential problems. On December 7, 1998, the OIG and HCFA jointly published a **Federal Register** notice (63 FR 67486) seeking input and comments from interested parties on a proposed bulletin designed to address the principal requirements of the patient anti-dumping statute—known as the Emergency Medical Treatment and Labor Act (EMTALA)—(section 1867 of the Social Security Act (the Act)) and to discuss how the requirements of that statutory provision apply to individuals insured by managed care plans. Section 1867 of the Act imposes specific obligations on Medicare-participating hospitals that offer emergency services with respect to individuals coming to the hospital and seeking treatment of possible emergency medical conditions. Specifically, the draft Special Advisory Bulletin sought to address: (1) The obligations of hospitals to provide appropriate medical screening examinations to all patients seeking emergency services and stabilizing treatment when necessary; (2) Some of the special concerns in the provision of emergency services to enrollees of managed care plans; (3) The rules governing Medicare and Medicaid managed care plans with respect to prior authorization requirements and payment for emergency services; and (4) what types of practices would serve to promote hospital compliance with the patient anti-dumping statute when managed care enrollees seek emergency services.

The proposed Special Advisory Bulletin attempted to be consistent with policies set forth in the *HCFA State Operations Manual on Provider Certification* (Transmittal No. 2, May 1998) which provides guidelines and investigative procedures for reviewing the responsibilities of Medicare participating hospitals. Hospitals should also be aware that regulations at 42 CFR part 422 implementing section 1852(d) of the Act govern Medicare+Choice organizations' obligations to pay for emergency services without regard to prior authorization or the treating hospital's relationship with the plan.

Summary of Major Issues Raised

The major issues raised by the over 150 commenters concerned dual staffing, prior authorization, the use of financial responsibility forms and advanced beneficiary notifications, and the handling of patient inquiries regarding the obligation to pay for emergency services. Additional comments were also received concerning voluntary withdrawal and the reporting of alleged patient dumping violations.

1. Dual Staffing

The majority of comments expressed concern about the impact of dual staffing in hospital emergency departments (EDs), and many expressed the view that dual staffing would lead to disparate standards in the ED by fostering ''separate but unequal treatment.'' Possible disparate standards cited dealt with physician credentialing, drug formularies, equal access and use of ancillary services, consistency in specialty referrals, waiting times and quality assurance. A number of emergency physicians commenting on the proposed bulletin indicated that dual staffing would function to protect the financial interests of managed care organizations rather than provide the highest quality of care to individuals; many hospitals believed that dual staffing would add layers of bureaucracy to the system thereby disrupting and delaying patient care. Of course, there may be countervailing considerations relating to the benefits of flexibility and creativity in structuring health delivery systems, and there is a lack of data to support some assertions by those opposing dual staffing. For the Federal Government to prohibit in advance, on a national level, arrangements which might increase access to health care services would require some greater likelihood of risk or harm than we currently foresee. (In this context, we note that States are able to restrict or prohibit dual staffing arrangements within their borders.) It may or may not become evident that dual staffing impedes the goals of EMTALA, or that it advances publicly beneficial goals of managed care and other innovations in health care delivery, such as coordination of services and health promotion. If we were to declare that all dual staffing arrangements violate EMTALA, we might unnecessarily prevent the development of health care delivery practices which could improve access to health care.

Thus, we have concluded that while dual staffing raises serious issues, it would not necessarily constitute a *per se* violation of the anti-dumping statute. However, certain practices or occurrences that could arise in a dually staffed emergency department or service could violate EMTALA. Examples of these potential violations are described below.

2. Prior Authorization

While supportive of the ''no prior authorization'' best practice outlined in the proposed bulletin, many commenters argued for expanding the reach of this approach beyond the current authority of HCFA and the OIG as well as the patient anti-dumping statute, by making the policy applicable not only to hospitals but also to health plans. Several commenters expressed concern that hospitals are being forced to accept the contracts offered by managed care plans, although they realize that if they comply with the prior authorization requirements in the contract, the hospital could be in violation of the patient anti-dumping statute. Commenters further indicated that unless prior authorization requirements are abandoned or prohibited altogether, huge bills could result for patients whose care had not been authorized in advance. Commenters also stated that the ''prudent layperson'' standard does not sufficiently protect a hospital's interest in receiving payment for the emergency services provided.

We were unable to resolve many of the commenters' concerns because we do not have the authority under the patient anti-dumping statute to mandate reimbursement for emergency services or to regulate non-Medicare and non-Medicaid managed care plans. However, we have amended the prior authorization section of the bulletin slightly to make it absolutely clear that an emergency physician is free to phone a physician in a managed care plan at any time for a medical consultation when it is in the best interest of the patient. Further, we have clarified that once stabilizing treatment is under way, a managed care plan may be contacted for payment authorization.

3. Use of Advance Beneficiary Notices (ABNs) or Other Financial Responsibility Forms

With regard to the use of ABNs, commenters indicated that Medicare requires ABNs to be provided to beneficiaries if the hospital is to be permitted to bill the beneficiary later for a non-covered service, even for services provided in an emergency context. Thus, if a Medicare managed care patient arrived at the hospital and the ED physician was concerned that the plan may not cover the service, the physician *must* have the patient sign an ABN or else be precluded from billing the patient for the service if the plan does not pay. Several comments indicated that many hospitals are using ABNs for non-Medicare patients as well, even though these hospitals should be able to bill these patients for services in any case. A number of commenters opposed making it a ''best practice'' for hospitals not to ask patients to complete financial responsibility forms upon registration, indicating that it is common practice that standard consent forms are signed at the time of registration which include an agreement that the patient will pay for services not covered by insurance. Commenters expressed the view that as long as this practice does not cause delay in screening and stabilization, it would be very inefficient for a hospital to have to engage in ''split registration.''

It continues to be our view that a hospital would violate the patient anti-dumping statute if it delayed a medical screening examination or necessary stabilizing treatment in order to prepare an ABN and obtain a beneficiary signature. The best practice would be for a hospital *not to give* financial responsibility forms or notices to an individual, or otherwise attempt to obtain the individual's agreement to pay for services before the individual's stabilizing treatment is under way. This is because the circumstances surrounding the need for such services, and the individual's limited information about his or her medical condition, may not permit an individual to make a rational, informed consumer decision.

It normally is permissible to ask for general registration information prior to performing an appropriate medical screening examination. The hospital may not, however, condition such a screening and further treatment upon the individual's completion of a financial responsibility form or provision of a co-payment for any services. Such a practice could unduly deter the individual from remaining at the hospital to receive care to which he or she is entitled and which the hospital is obligated to provide regardless of ability to pay, and could cause unnecessary delay.

With respect to the use of financial responsibility forms, we believe that many commenters mistakenly interpreted the proposed bulletin as an attempt to derail the use of reasonable hospital registration procedures that do not conflict with the goals of the Patient Anti-Dumping Statute. We did not mean to give that impression. We are therefore clarifying this portion of the Special Advisory Bulletin consistent with the specific language set forth in the *HCFA State Operations Manual,* Interpretive Guidelines of May 1998, regarding registration processes permitted in the ED, which typically include the collection of demographic information, insurance information, whom to contact in an emergency and other relevant information. Specifically, the Interpretive Guidelines indicate that a hospital ''may continue to follow reasonable registration processes for individuals presenting with an emergency medical condition.'' Reasonable registration processes should not unduly discourage individuals from remaining for further evaluation. Reasonable registration processes may include asking whether an individual is insured and, if so, what that insurance is, as long as this inquiry does not delay screening or treatment.

We are also clarifying that, while a reasonable registration process may go forward prior to screening for an individual who is not in an acute emergency situation, it would be impermissible for a hospital to condition a screening examination or the commencement of necessary stabilizing treatment on completion of a financial responsibility form.

4. Inquiries Concerning Financial Liability for Emergency Services by the Individual

With regard to a hospital's handling of patient inquiries regarding the patient's obligation to pay for emergency services, we recommended in the proposed bulletin that such questions be answered by qualified personnel. We also recommended that hospital staff encourage a patient who believes that he or she may have an emergency medical condition to defer any further discussions of financial responsibility until after the provision of an appropriate medical screening examination and the provision of stabilizing treatment if the patient's condition warrants it. Many commenters disagreed with this recommendation, indicating that such a deferral may have the opposite of the intended result, since patients who are unable to determine their potential financial liability may be discouraged from staying at the hospital to receive an examination or treatment. As an alternative, commenters recommended that hospital staff be permitted to respond to patient inquiries with specific financial information so long as the hospital continues to offer, and encourages the patient to stay for, a medical screening examination. In addition, commenters were concerned that the absence of full and frank disclosure between physicians and patients regarding treatment options, insurance coverage and follow-up treatment would inhibit the examination and treatment process. These commenters recommended allowing conversations about financial liability issues to take place between hospital staff and patients so long as such discussions do not delay screening and treatment.

We have not substantially revised this section. We believe that it already makes clear that any inquiry about financial liability should be answered as fully as possible by a qualified individual. Alternatives suggested by the commenters would be acceptable if such alternatives did not conflict with a minimum effort to defer discussions about financial liability issues until after the provision of screening and the commencement of stabilizing treatment. This section does not suggest that a patient is not entitled to full disclosure, only that the hospital should always convey to the patient that screening and stabilization are its priorities regardless of the individual's insurance coverage or ability to pay and that the hospital should discuss, to the extent possible, the medical risks of leaving without a medical screening exam and/or stabilizing treatment.

5. Voluntary Withdrawal

Commenters also raised concerns about the hospital's obligation in the event of voluntary withdrawal by an individual, and the proposed bulletin's suggestion that a number of procedures be followed and documented when a patient elects to withdraw his or her request for treatment. Commenters believed that the proposed procedures do not make allowance for those times when a hospital is not aware of the individual's departure until after he or she has left the hospital. Commenters recommended that the steps set forth in the draft bulletin should apply only when the hospital knows of the withdrawal, that is, when possible, and that when a person leaves without

telling hospital staff, a hospital be required to document the fact that a patient simply left without notice and retain the log that shows that the person had been there and what time the hospital discovered that the patient had left. We have revised this section to some extent. However, it is our view that hospitals should be very concerned about patients leaving without being screened. Since every patient who presents seeking emergency services is entitled to a screening examination, a hospital could violate the patient anti-dumping statute if it routinely keeps patients waiting so long that they leave without being seen, particularly if the hospital does not attempt to determine and document why individual patients are leaving, and reiterate to them that the hospital is prepared to provide a medical screening if they stay.

In accordance with our assessment of the comments and issues raised, set forth below is the revised OIG/HCFA Special Advisory Bulletin addressing the patient dumping statute.

Obligations of Hospitals To Render Emergency Care to Enrollees of Managed Care Plans

What are the Obligations of Medicare-Participating Hospitals That Offer Emergency Services to Individuals Seeking Such Services?

- The anti-dumping statute (section 1867 of the Social Security Act; 42 U.S.C. 1395dd) sets forth the federally-mandated responsibilities of Medicare-participating hospitals to individuals with potential emergency medical conditions.
- Under the anti-dumping statute, a hospital must provide to any person who comes seeking emergency services an appropriate medical screening examination sufficient to determine whether he or she has an emergency medical condition, as defined by statute. When medically appropriate, ancillary services routinely available at the hospital must be provided as part of the medical screening examination.
- If the person is determined to have an emergency medical condition,

—The hospital is required to stabilize the medical condition of the individual, within the capabilities of the staff and facilities available at the hospital, prior to discharge or transfer; or

—If the patient's medical condition cannot be stabilized before a transfer requested by the patient (or responsible medical personnel determine that the medical benefits of a transfer outweigh the risks), the hospital is required to follow very specific statutory requirements designed to facilitate a safe transfer to another facility.

- A hospital may not delay the provision of an appropriate medical screening examination or further medical examination and stabilizing medical treatment in order to inquire about the individual's method of payment or insurance status.
- Regulations implementing these statutory obligations are found at 42 CFR part 489. The anti-dumping statute is enforced jointly by the Health Care Financing Administration (HCFA) and the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS).
- Sanctions that may be imposed by HHS for violations of the anti-dumping statute include the termination of the hospital's provider agreement, and the imposition of civil money penalties against both the hospital and the physician (including on-call physicians) responsible for examination, treatment, or transfer of an individual. In addition, the anti-dumping statute provides for the exclusion of such physician if the violation is gross and flagrant or repeated.

Why is there a Special Concern About the Provision of Emergency Services to Enrollees of Managed Care Plans?

Many managed care plans require their members to seek prior authorization for some medical services, including emergency services. (As explained below, a Medicare or Medicaid contracting Managed Care Organization is prohibited from requiring its members to seek prior authorization for emergency medical services.) However, as noted above, the anti-dumping statute prohibits a hospital's inquiry about a patient's method of payment or insurance status, or use of such information, from delaying a screening examination or stabilizing medical treatment. It has come to our attention that some hospitals routinely seek prior authorization from a patient's primary care physician or from the plan when a managed care patient requests emergency services, since the failure to obtain authorization may result in the plan refusing to pay for the emergency services. In such circumstances, the patient may be personally liable for the costs.

A reasonable argument can be made that patients (other than those arriving in dire condition) should be informed when they request emergency services of their potential financial liability for services. Some would go further and argue that the hospital itself should seek prior approval from the patient's health plan for emergency services to preserve the patient's right to seek coverage for such services. However, our concern is that such an inquiry may improperly or unduly influence patients to leave the hospital without receiving an appropriate medical screening examination. This result would be inconsistent with the goals of the anti-dumping statute and could leave the hospital exposed to liability under the statute.

Investigations of allegations of the anti-dumping statute violations across the country have persuaded the OIG and HCFA that managed care patients may be at risk of being discharged or transferred without receiving a medical screening examination, largely because of the problems inherent in seeking ''prior authorization.'' Hospitals sometimes are caught between the legal obligations imposed under the anti-dumping statute and the terms of agreements which they have with managed care plans. For example, some managed care organizations, as a condition of contracting with hospitals to provide services to their enrollees, have attempted to require such hospitals to obtain prior authorization from the plan before screening or treating an enrollee in order to be eligible for reimbursement for services provided.

The OIG's and HCFA's view of the legal requirements of the anti-dumping statute in this situation is as follows. Notwithstanding the terms of any managed care agreements between plans and hospitals, the anti-dumping statute continues to govern the obligations of hospitals to screen and provide stabilizing medical treatment to individuals who come to the hospital seeking emergency services regardless of the individual's ability to pay. While managed care plans have a financial interest in controlling the kinds of services for which they will pay, and while they may have a legitimate interest in deterring their enrollees from over-utilizing emergency services, no contract between a hospital and a managed care plan can excuse the hospital from its anti-dumping statute obligations. Once a managed care enrollee comes to a hospital that offers emergency services, the hospital must provide the services required under the anti-dumping statute without regard for the patient's insurance status or any prior authorization requirement of such insurance.[1]

[1] Separate and apart from the anti-dumping statute, in accordance with sections 1857(g), 1876(i)(6), 1903(m)(5) and 1932(e) of the Social Security Act, the OIG (acting on behalf of the Secretary) has the authority to impose intermediate sanctions against Medicare and Medicaid contracting managed care plans that fail to provide medically necessary services, including emergency

What About Arrangements Between Hospitals and Managed Care Plans for ''Dual Staffing'' of Emergency Departments?

Some managed care organizations (MCOs) and hospitals have entered into, or are considering entering into, arrangements whereby the hospital permits the MCO to station its own physicians in the hospital's emergency department, separate from the hospital's own emergency physician staff, for the purpose of screening and treating MCO patients who request emergency services. This kind of arrangement is known as ''dual staffing.''

Such arrangements can exist only where they do not violate current law. Regardless of any contractual arrangement a hospital enters into to staff its emergency department, the hospital remains responsible under EMTALA to provide an appropriate medical screening examination to determine whether or not an emergency medical condition (EMC) exists. If an EMC exists, EMTALA further provides that the hospital must treat and stabilize the medical condition, unless the patient is transferred in accordance with the specific requirements of the statute.

Also, section 1867(h) of the Act provides that a participating hospital, in providing emergency medical care, ''may not delay provision of an appropriate medical screening examination * * * or further medical examination and treatment * * * in order to inquire about the individual's method of payment or insurance status.'' A dual staffing system, based on method of payment or insurance status, which creates delays in screening or stabilization violates this prohibition. Also, the hospital remains responsible under the Medicare Conditions of Participation as well as any other relevant patient protections and quality safeguards. Further, the hospital is bound by provisions that protect whistle blowers who report violations of EMTALA in dual staffing situations.

Different points of view on dual staffing exist in the health care community. It is believed by some that dual staffing in emergency departments can facilitate the expeditious provision of services to MCO patients by physicians and other practitioners in their own health plans. MCO ability to care for their patients after stabilization, or after the absence of an EMC is determined, might be enhanced by dual staffing. However, some hospitals and emergency physicians have asked us to disallow dual staffing out of concern for logistical difficulties and the perception that separate cannot be equal in a bifurcated emergency department.

If a hospital constructs two equally good emergency service ''tracks,'' each adequately staffed and each with equally good access to all of the medical capabilities of the hospital, such that both MCO and non-MCO patients receive equal access to screening and stabilizing medical treatment, then such an arrangement would seem to not violate the requirements of the anti-dumping statute.

Absent such equivalency, implementation of dual staffing raises concerns under EMTALA. The following are potential violations:

- Where the emergency department directs a hospital-owned and operated ambulance differently in field care or facility destination depending on which members of a dual staff (that is, either MCO or non-MCO physicians or practitioners) are either on the radio to emergency medical services (EMS) or are expected to see the patient.
- If the emergency department alert status affecting acceptance of EMS cases differs depending on which ''side'' (MCO or non-MCO) is expected to see the patient.
- If either the MCO or non-MCO track is understaffed or simply overcrowded, and a patient in a particular track is subjected to a delay in screening and stabilizing treatment, even though a physician in the alternative track was available to see the individual. Where there is no emergency department policy or procedure, or custom or practice, which requires cross-over coverage between the dual staffs as required for patient care. (Delays in screening or stabilization of patients on one track but not the other are delays in screening or stabilization based on the insurance status of the individual and thus represent potential violations of EMTALA.)
- If the hospital's emergency department quality oversight plan differs between the two ''sides'' (MCO and non-MCO) of the dually staffed ED.
- Where the protocols for transfer of unstable patients differ other than administratively, for example, (1) if the substance of stability determination criteria between the two staffs are different, or (2) when patients are unstable and are transferred routinely to different facilities that are not equivalent to each other in level of care or distance, and their destinations depend on their insurance status.

While we recognize that dual staffing will add to a hospital's burden to assure that it is not violating EMTALA, we do not believe the EMTALA statute makes dual staffing illegal *per se.* We expect that practical experience with dually staffed emergency departments will reveal whether or not they can be maintained without violating EMTALA.

What Are the Rules Governing Medicare and Medicaid Managed Care Plans With Respect to Prior Authorization Requirements and Payment for Emergency Services?

There are special requirements for managed care plans that contract with Medicare and Medicaid to provide services to beneficiaries of those programs. Congress has specified that Medicare and Medicaid managed care plans may not require prior authorization for emergency services, and must pay for such services, without regard to whether the hospital providing such services has a contractual relationship with the plan. Under statutory amendments recently enacted in the Balanced Budget Act (BBA) of 1997 (Public Law 105–33)[2], Medicare and Medicaid managed care plans are prohibited from requiring prior authorization for emergency services, including those that ''are needed to evaluate or stabilize an emergency medical condition.'' Moreover, Medicare and Medicaid managed care plans are required to pay for emergency services provided to their enrollees. The obligation to pay for emergency services under Medicare managed care contracts is based on a ''prudent layperson'' standard, which means that the need for emergency services should be determined from a reasonable patient's perspective at the time of presentation of the symptoms.[3]

services, to enrollees where the failure adversely affects (or has a substantial likelihood of adversely affecting) the enrollee. Medicare and Medicaid managed care plans that fail to comply with the above provision are subject to civil money penalties of up to $25,000 for each denial of medically necessary services.

[2] See section 4001 of the BBA, which created section 1852(d) of the Act. Section 1852(d) covers emergency services and prior authorization for Medicare enrollees. Also, section 4704(a) of the BBA created section 1932(b) of the Act, which contains Medicaid provisions covering emergency services and prior authorization.

[3] With respect to Medicare, prior authorization requirements for Medicare MCO plans were already explicitly prohibited by regulations before the passage of the BBA for emergency services provided outside an HMO or competitive medical plan (42 CFR 417.414(c)(1)), and by implication for services provided within such a plan. Similarly, while the BBA clarified and codified the ''prudent layperson'' standard, a variation of this standard has always been part of the Medicare policy for managed care plans. Even prior to the BBA, Medicare and Medicaid managed care plans were required to reimburse for emergency services provided other than through the organization. See section 1876(c)(4)(B), 42 CFR 417.414(c)(1) for Medicare and section 1903(m)(2)(A)(vii), 42 CFR 434.30(b)(2) for Medicaid.

What Practices Will Promote Compliance With the Anti-Dumping Statute by Hospitals When Managed Care Enrollees Seek Emergency Services?

The OIG and HCFA are concerned that discussion by hospital personnel with a patient regarding the possible need for prior authorization, or his or her potential financial liability for medical services provided by a hospital that offers emergency services, could unduly influence patients to leave the emergency department without receiving an appropriate medical screening examination or any necessary stabilizing treatment. Without also informing the patient of his or her rights to a medical screening examination and to stabilizing medical treatment if the patient's condition warrants it and the medical risks of leaving, a discussion about insurance, ability to pay and seeking prior authorization may impede a hospital's compliance with its obligations under the anti-dumping statute. Discussions initiated by a hospital staff member with a patient regarding potential prior authorization requirements and their financial consequences that have the effect of delaying a medical screening are per se violations of the anti-dumping statute. Moreover, the OIG and HCFA believe that in the absence of an initial screening, the decision of a managed care plan regarding the need for treatment is likely to be ill-informed. Patients are entitled to receive a medical screening examination and stabilizing medical treatment under the anti-dumping statute regardless of a hospital's contract with a health plan that requires prior authorization. Accordingly, the OIG and HCFA suggest the following practices to minimize the likelihood that a hospital will violate the statute:

- *No Prior Authorization Before Screening or Commencing Stabilizing Treatment*

It is not appropriate for a hospital to seek, or direct a patient to seek, authorization to provide screening or stabilizing services to an individual from the individual's health plan or insurance company until after the hospital has provided (1) an appropriate medical screening examination to determine the presence or absence of an emergency medical condition, and (2) any further medical examination and treatment necessary to commence stabilization of an emergency medical condition. The hospital may seek authorization for payment for all services after providing a medical screening examination and once necessary stabilizing treatment is underway. (We recognize that this guidance differs in part from that provided in the *HCFA State Operations Manual on Provider Certification* (Transmittal No. 2, May 1988, Interpretive Guidelines—Responsibilities of Medicare Participating Hospitals in Emergency Cases, Data Tag No. A406, p. V–20), which states that ''it is not appropriate for a hospital to request or a health plan to require prior authorization before a patient has received a medical screening exam to determine the presence or absence of an emergency medical condition or until an emergency medical condition has been stabilized.'' We will revise the *State Operations Manual* to ensure that it conforms to the guidance provided in this bulletin) We wish to emphasize that an emergency physician is not precluded from contacting the patient's personal physician at any time to seek advice regarding the patient's medical history and needs that may be relevant to the medical screening and treatment of the patient, as long as this consultation does not inappropriately delay such screening and stabilization.[4]

- *Use of Advance Beneficiary Notices and other Financial Responsibility Forms*

A hospital would violate the patient anti-dumping statute if it delayed a medical screening examination or necessary stabilizing treatment in order to prepare an ABN and obtain a beneficiary signature. The best practice would be for a hospital *not to give* financial responsibility forms or notices to an individual, or otherwise attempt to obtain the individual's agreement to pay for services before the individual is stabilized. This is because the circumstances surrounding the need for such services, and the individual's limited information about his or her medical condition, may not permit an individual to make a rational, informed consumer decision. It normally is permissible to ask for general registration information prior to performing an appropriate medical screening examination. The hospital may not, however, condition such a screening and further treatment upon the individual's completion of a financial responsibility form or provision of a co-payment for any services. Such a practice could unduly deter the individual from remaining at the hospital to receive care to which he or she is entitled and which the hospital is obligated to provide regardless of ability to pay, and could cause unnecessary delay. In accordance with the *HCFA State Operations Manual,* Interpretative Guidelines, V–27 (May 1998), a hospital may continue to follow reasonable registration processes for individuals presenting for evaluation and treatment of a medical condition. Reasonable registration processes may include asking whether an individual is insured and, if so, what that insurance is, as long as this inquiry does not delay screening or treatment. However, reasonable registration processes should not unduly discourage patients from remaining for further evaluation.

- *Qualified Medical Personnel Must Perform Medical Screening Examinations and Physicians Must Authorize Transfers*

A hospital should ensure that either a physician or other qualified medical personnel (that is, hospital staff approved by the hospital's governing body to perform certain medical functions) provides an appropriate medical screening examination to *all* individuals seeking emergency services. Depending upon the individual's presenting symptoms, this screening examination may range from a relatively simple examination to a complex one which requires substantial use of ancillary services available at the hospital and on-call physicians. If it is determined that the individual has an emergency medical condition and that the individual requires a transfer, only a physician (or, if a physician is not physically present in the emergency department at the time, a qualified medical person in consultation with a physician in accordance with regulations at 42 CFR 489.24(d)(1)(ii)(C)) may authorize such a transfer.

- *When a Patient Inquires About Financial Liability for Emergency Services*

If a patient inquires about his or her obligation to pay for emergency services, such an inquiry should be answered by a staff member who has been well trained to provide information regarding potential financial liability. This staff member also should be knowledgeable about the

[4] If, when contacted, a managed care physician requests that the patient be transferred, the hospital must still conclude the medical screening examination and provide any treatment necessary to stabilize the patient prior to transfer, or in the case of an unstable patient, provide an appropriate transfer. A hospital may only transfer an unstable patient at the request of the managed care physician when either a physician at the hospital certifies that the medical benefits of transfer outweigh the increased risk, or when the patient requests the transfer in writing after being informed of the hospital's obligations and the risks of transfer.

hospital's anti-dumping statute obligations and should clearly inform the patient that, notwithstanding the patient's ability to pay, the hospital stands ready and willing to provide a medical screening examination and stabilizing treatment, if necessary. Hospital staff should encourage any patient who believes that he or she may have an emergency medical condition to remain for the medical screening examination and any necessary stabilizing treatment. Staff should also encourage the patient to defer further discussion of financial responsibility issues, if possible, until *after* the medical screening has been performed. If the patient chooses to withdraw his or her request for examination or treatment, a staff member with appropriate medical training should discuss the medical issues related to a ''voluntary withdrawal.''

- *Voluntary Withdrawal*

If an individual chooses to withdraw his or her request for examination or treatment at the presenting hospital, and if the hospital is aware that the individual intends to leave prior to the screening examination, a hospital should take the following steps: (1) Offer the individual further medical examination and treatment within the staff and facilities available at the hospital as may be required to identify and stabilize an emergency medical condition; (2) Inform the individual of the benefits of such examination and treatment, and of the risks of withdrawal prior to receiving such examination and treatment; and (3) Take all reasonable steps to secure the individual's written informed consent to refuse such examination and treatment. The medical record should contain a description of risks discussed and of the examination, treatment, or both, if applicable, that was refused. If an individual leaves without notifying hospital personnel, the hospital should, at a minimum, document the fact that the person had been there, what time the hospital discovered that the patient had left, and should retain all triage notes and additional records, if any. However, the burden rests with the hospital to show that it has taken appropriate steps to discourage an individual from leaving the hospital without evaluation.

Dated: November 4, 1999.

June Gibbs Brown,

Inspector General, Office of Inspector General.

Dated: November 3, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–29390 Filed 11–9–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement (''CRADA'') Opportunity; Certain Live Attenuated Respiratory Syncytial Viruses (RSV) and Parainfluenza Viruses (PIV) for Use as Human Vaccines

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is seeking Licensee(s) and/or a commercial collaborator(s) to further develop, test, and commercialize as live attenuated vaccines certain recombinant RSV and PIV strains and associated intellectual property developed in the Laboratory of Infectious Diseases (LID), Division of Intramural Research, National Institute of Allergy and Infectious Diseases (NIAID).

DATES: There is no date by which license applications must be received. Respondents who wish to be considered for the CRADA opportunity must submit a Capability Statement (described below in **SUPPLEMENTARY INFORMATION**) to the NIAID. Only written Capability Statements received by the NIAID on or before December 27, 1999 for consideration. Capability Statements should be forwarded to Michael R. Mowatt, Ph.D. at the address specified below.

FOR FURTHER INFORMATION CONTACT: Inquiries about these licensing opportunities should be addressed to Robert Benson, Ph.D., Patent Advisor, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804, Telephone: (301) 496–7056 ext. 267; Facsimile: (301) 402–0220; Email: rb20m@nih.gov. Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement. Respondents interested in licensing the inventions will be required to submit an ''Application for License to Public Health Service Inventions''.

Inquiries about the CRADA opportunity should be addressed to Michael R. Mowatt, Ph.D., Technology Development Manager, Office of Technology Development, NIAID, Building 31 Room 3B62, 31 Center Drive MSC 2137, Bethesda, MD 20892–2137, Telephone: (301) 435–8618, Facsimile: (301) 402–7123; Email: mmowatt@nih.gov. Respondents interested in the CRADA opportunity should be aware that it might be necessary to secure a license to the above-mentioned patent rights in order to commercialize products arising from a CRADA.

SUPPLEMENTARY INFORMATION: The inventions described below are owned by an agency of the U.S. Government and are available for licensing—in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development—and/or further development under one or more CRADAs in the clinically important applications described below.

Human Respiratory Syncytial Viruses (HRSV), subgroups A and B (HRSV–A and HRSV–B, respectively), are the most common cause of serious respiratory tract infection in children and infants less than one year of age. RSV is responsible for more than 20% of all pediatric hospital admissions due to respiratory tract disease, and in the US is the cause of 91,000 hospitalizations and 4,500 deaths. No licensed vaccine is available to prevent disease by these viruses.

Attenuated RSV strains for intranasal administration are the most promising candidate vaccines because they are efficacious even in the presence of passively transferred antibodies, the very situation found in the target population of infants with maternally derived anti-HRSV antibodies. Designed mutations can be introduced into the RSV genome or antigenome utilizing cDNA technology as a means of engineering suitably attenuated RSV strains. See Collins *et al.*, Proc. Nat. Acad. Sci. USA *92* 11563–11567, 1995, and PCT/US96/15524, ''Production of Infectious Respiratory Syncytial Virus From Cloned Nucleotide Sequences'', which is available from NIH for licensing nonexclusively.

Human Parainfluenza Viruses (HPIV), serotypes 1, 2, and 3 (HPIVs, HPIV2, and HPIV1, respectively), are in aggregate the second most common

cause of serious respiratory tract infection in children and infants less than one year of age. No licensed vaccine is available to prevent disease by any of these viruses. Attenuated HPIV strains are the most promising candidate vaccines for the same reasons noted above for attenuated RSV vaccines. The following seven recently filed patent applications are available for licensing for certain virus vaccine strains.

Production of Attenuated Chimeric Respiratory Syncytial Virus Vaccines From Cloned Nucleotide Sequences

Inventors: Peter L. Collins, Stephen S. Whitehead and Brian R. Murphy.
Serial Number: 09/291,894 (CIP of 08/892,403, PCT/US97/12269).
Filing Date: April 13, 1999.

This patent application broadly describes and claims RSV strains that are attenuated recombinant chimeras of two different RSV parental strains. The chimeras comprise a background genome or antigenome from one strain into which is isnerted or substituted genes or genomic segments from a heterologous RSV strain. Introduction of the heterologous gene can serve to (a) attenuate the background strain, and/or (b) change the immunogenicity of the background strain to the heterologous strain or (c) form a chimera with the immunogenicity of both the background and heterologous strains. A chimeric virus consisting of a RSV Group A background strain into which the F and G genes of the RSV Group B virus were substituted was shown to be infectious and to raise protective antibodies against RSV Group B in chimpanzees. Thus a candidate RSV vaccine strain of one Group with the proper balance of attenuation and immunogenicity can now be used to make a vaccine against the other Group just by switching the F and/or G genes. Certain candidate RSV vaccine strains are not available for licensing.

Production of Attenuated, Human-Bovine Chimeric Respiratory Syncytial Virus Vaccines

Inventors: Ursula Buchholz, Peter L. Collins, Brian R. Murphy and Stephen S. Whitehead.
Serial Number: 60/143,132.
Filing Date: July 9, 1999.

The inventors have shown that genes may be switched between human RSV (HRSV) and bovine RSV (BRSV) and a live, infectious and immunogenic chimeric virus can result. Based on this discovery, two approaches are contemplated to produce chimeric strains that are vaccine candidates, balanced in attenuation and immunogenicity. The first is to start with BRSV and substitute in the HRSV F and G genes; this has been done and the resulting chimeric strain shown to be highly attenuated in chimpanzees. Other HRSV genes or genome segments may be inserted to decrease attenuation. The other approach is to start with HRSV and introduce BRSV genes, other than the BRSV F and G genes. These host range mutants should be extremely stable because of the large number of nucleotide and amino acid sequence differences between bovine and human RSV genes.

Production of Recombinant Respiratory Syncytial Viruses Expressing Immune Modulatory Molecules

Inventors: Peter L. Collins, Alexander R. Bukreyev, Brian R. Murphy and Stephen S. Whitehead.
Serial Number: 60/143,425.
Filing Date: July 13, 1999.

With the goal of producing attenuated RSV vaccine strains with new and favorable properties, the cytokines, Interferon-gamma (IFN-γ), Interleukin-2 (IL–2), Interleukin-4 (IL–4) and Granulocyte-Macrophage Colony Stimulating Factor (GM–CSF) were inserted into the RSV genome. Utilizing murine versions of the cytokines and mice as animals models, all four recombinant RSVs were infectious, immunogenic, protective against RSV challenge, and produced substantial quantities of the given cytokine. RSV/IFN-γ and RSV/GM–CSF were particularly interesting because both were attenuated but with enhanced immunogenicity, a very desirable phenotype in attenuated virus vaccine strains. IL–2 insertion resulted in attenuation but no change in immunogenicity.

Production of Attenuated Respiratory Syncytial Viruses Vaccines Involving Modification of M2 Open Reading Frame (ORF) 2

Inventors: Alison Bermingham, Peter L. Collins and Brian R. Murphy.
Serial Number: 60/143,097.
Filing Date: July 7, 1999.

This application describes two inventions, both involving knocking out or ablating the expression of the second translational open reading frame encoded by the M2 gene (M2 ORF2) of RSV. The first invention is the finding that M2 ORF2 knockout viruses are infectious and immunogenic but are attenuated from 100–1000 fold in vitro. Thus, the M2 ORF2 knockout represents another attenuating mutation that can be mixed with other known mutations to produce RSV vaccine strains with the proper balance of attenuation and immunogenicity. The second invention involves the finding that while the implication of M2 ORF2 knockouts is restricted compared to wildtype, the production of mRNA and viral proteins is increased 175–300%. Thus, even though the virus is attenuated, the expression of viral antigens is increased. As another application, these knockouts can be used to produce the immunogenic F and G proteins for use in subunit vaccines.

Recombinant PIV Vaccines Attenuated by Deletion or Ablation of a Non-Essential Gene

Inventors: Anna P. Durbin, Peter L. Collins and Brian R. Murphy.
Serial Number: 09/350,821.
Filing Date: July 9, 1999, with priority to September 19, 1997.

The present invention concerns the discovery that knocking out one or more of the non-essential C, D and/or V genes results in attenuated and immunogenic virus strains. A C knockout and DV double knockout of a human PIV3 (JS wildtype) strain were attenuated and protective in African Green Monkeys. Knockouts of the C, D and/or V genes represent another type of attenuation to be mixed with the other known mutations to generate PIV vaccine strains with the appropriate balance of attenuation and immunogenicity.

Attenuated, Human-Bovine Chimeric Parainfluenza Virus (PIV) Vaccines

Inventors: Jane E. Bailly, Peter L. Collins, Brian R. Murphy and Anna P. Durbin.
Serial Number: 60/143,134.
Filed: July 9, 1999.

The essence of the present invention is that bovine PIV (BPIV) gene(s) other than the hemagglutinin-neuraminidase (HN) and fusion (F) glycoprotein genes can be substituted for their counterparts in a NPIV genome or antigenome as a means of attenuation based on host range restrictions. Conversely, the genes that encode HPIV protective antigens, *e.g.*, the HN and F genes, can be inserted into a BPIV genome or antigenome. Either approach can yield human/bovine PIV chimeras that are infectious and immunogenic but attenuated, due to host range effects, and thus are candidate vaccine strains. BPIV genes may serve as another means of modulating viral attenuation, *e.g.*, in combination with other known attenuating mutations, as described above, in order to derive a suitably attenuated HPIV. Alternatively, starting from BPIV and inserting the antigenic HPIV F and/or NH genes, along with other HPIV genes or other attenuating mutations represents another path one

can take to an attenuated HPIV vaccine. Certain candidate human-bovine chimeric PIV vaccine strains are not available for licensing.

Production of Attenuated Negative Stranded RNA Virus Vaccines From Cloned Nucleotide Sequences

Inventors: Brian R. Murphy, Peter L. Collins, Anna P. Durbin, and Mario H. Skiadopoulos.

Serial Number: 60/129,006.

Filling Date: April 13, 1999.

Negative stranded RNA viruses (the Mononegavirales) include RSV, PIV, measles, mumps and rabies as human pathogens. Recombinant production of live attenuated virus strains as vaccine candidates has involved, for each virus, identifying attenuating mutations and producing recombinant virus strains with different combinations of mutations in a hunt for the right balance of attention and immunogenicity. This invention dramatically increases the number of mutations available. The inventors have shown that attenuating mutations in one negative stranded RNA virus can be ''transferred'' to homologous locations in other negative stranded RNA viruses, resulting in a transfer of the attenuation phenotype. Now, many of the attenuating mutations known for RSV or PIV can be transferred between each of these viruses, or into the other less studied members of this family. Also mutations identified in other paramyxoviruses, such as measles virus, can be transferred to RSV and PIV. Such transformations have been performed and show that this general approach works. Certain candidates RSV and PIV vaccine strains are not available for licensing.

The CRADA will employ attenuated human-animal chimeric RSV and PIV strains developed in LID using recombinant DNA methodologies to (1) identify and characterize the mutations responsible for attenuation, (2) engineer viral strains suitably attenuated for use as human vaccines, and (3) evaluate the attenuated viruses as live vaccines in animals and humans.

The LID has extensive experience in evaluating the safety, antigenicity, immunogenicity and efficacy of various human viral pathogens and vaccines thereof both in experimental animals and human volunteers. The Collaborator in this endeavor is expected to commit several scientists off-site to support the activities defined by the CRADA Research Plan.

These scientists, in collaboration with investigators in the LID, would coordinate the production and release testing of the candidate vaccines, generate monoclonal antibodies needed for manufacture of clinical lots and for their clinical evaluation, and use molecular virologic techniques to generate attenuating mutations suitable for use in live vaccine candidates. In addition, it is expected that the Collaborator will provide funds to supplement LID's research budget for the project and would make a major funding commitment to support the safety, immunogenicity and efficacy studies for candidate vaccines developed under the CRADA.

The capability statement must address, with specificity, each of the following selection criteria: (1) The technical expertise of the Collaborator's Principal Investigator and laboratory group in molecular virology, (2) Ability of Collaborator to manufacture experimental vaccine lots for parental administration under Good Manufacturing Practices (GMP) conditions, and (3) Ability to provide adequate and sustained funding to support the requisite vaccine safety and efficacy studies.

Dated: October 26, 1999.

Mark Rohrbaugh,

Director, Office of Technology Development, NIAID.

Dated: October 29, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, NIH.

[FR Doc. 99–29368 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Drug Research and Development of a Novel Vacuolar-Type (H+)-ATPase-Inhibitory Compound Class

AGENCY: National Cancer Institute, National Institute of Health, PHS, DHHS.

ACTION: Notice of opportunity for cooperative research and development (CRADA).

An opportunity is available for a Cooperative Research and Development Agreement (CRADA) for the purpose of collaborating with the NCI intramural Laboratory of Drug Discovery Research & Development (LDDRD) on further research and development of U.S. government-owned technology encompassed within U.S. Patent Application Serial No. 60/122,953, entitled ''Novel Vacuolar-Type (H+)-ATPase-Inhibitory Compounds and Compositions, and Uses Thereof.''

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement ((CRADA) with a pharmaceutical or biotechnology company to develop new drugs, therapeutic and/or preventative methods based on selective inhibition of vacuolar-type (H+) ATPases. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, methods of treatment or prevention that may result from the research. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or non-exclusive commercialization license to subject inventions arising under the CRADA and which are subject of the CRADA Research Plan, and can apply for background licenses to the existing patent described above, subject to any pre-existing licenses already issued for other fields of use.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Dr. Bjarne Gabrielsen, Technology Development & Commercialization Branch, National Cancer Institute-Frederick Cancer Research & Development Center, Fairview Center, Room 502, Frederick, MD 21701 (phone: 301–846–5465, fax: 301–846–6820).

Scientific inquiries should be directed to Dr. Michael R. Boyd, Chief Laboratory of Drug Discovery Research & Development, National Cancer Institute-Frederick Cancer Research & Development Center, Bldg. 1052, Rm 121, Frederick, MD 21702–1201 (phone: 301–846–5391; fax: 301–846–6919; e-mail boyd@dtpax2.ncifcrf.gov).

EFFECTIVE DATE: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential preliminary CRADA proposals, preferably two pages or less,

must be submitted to the NCI on or before December 10, 1999. Guidelines for preparing final CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

SUPPLEMENTARY INFORMATION:

Technology Available

DHHS scientists within the LDDRD, NCI have discovered a novel class of compounds that may have diverse uses in therapy of prophylaxis, or other medical uses, that require inhibition of pathophysiological or physiological processes mediated by vacuolar-type (H+)–ATPases (V–ATPases). Details are in U.S. Patent Application Serial No. 60/122,953, available under an appropriate Confidential Disclosure Agreement.

Technology Sought

Accordingly, DHHS now seeks collaborative arrangements for the joint elucidation, evaluation and development of novel compounds and methods to selectively inhibit phyiological and/or disease processes that are mediated, at least in part, through specific isoform(s) of V–ATPases. For collaboration with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide for equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid publication of research results as well as full and timely exploitation of any commercial opportunities.

NCI and Collaborator Responsibilities

The role of the LDDRD, NCI in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with pertinent available compounds for investigation/evaluation.
3. Planning research studies and interpreting research results.
4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical expertise and/or financial support for CRADA-related research as outlined in the CRADA Research Plan.
4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to on-going research and development.

2. Expertise and experience in the following areas: preclinical research and drug development of selective vacuolar-type ATPase-inhibitory compounds; ability to perform appropriate chemical synthetic efforts to support V–ATPase-directed structure/activity (SAR) studies, lead-optimization, drug candidate selection and development; performance of *in vitro* and/or *in vivo* assays of V–ATPase inhibition employing distinctive V–ATPases from diverse human and other mammalian tissues and cells.

3. The demonstration of adequate resources to perform the research, development and commercialization of this technology (*e.g.* facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

4. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.

5. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.

6. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

7. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

8. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or non-exclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: October 29, 1999.

Kathleen Sybert,

Chief, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–29367 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: December 9–10, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7S235, Bethesda, MD 20892.

Contact Person: Elizabeth G. Nabel, Director of Clinical Research Programs, National Heart, Lung, and Blood Institute, Division of Intramural Research, Building 10, Room 8C103, MSC 1754, Bethesda, MD 20892, 301/496–1518.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 3, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–29378 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Special Emphasis Panel.

Date: November 22, 1999.

Time: 9 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271. Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 2, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–29371 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: November 5, 1999.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.

Contact Person: Ronald Suddendorf, Phd., Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–6106, rsuddend@willco.niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 2, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–29372 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which could constitute unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 4, 1999.

Time: 5 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ronald Suddendorf, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol and Alcoholism, National Institutes of Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 4, 1999.

Time: 6 PM to 9 PM.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ronald Suddendorf, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research

Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 2, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–29373 Filed 11–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel K24 Teleconference Review.

Date: November 19, 1999.

Time: 12 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 3, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee.

[FR Doc. 99–29375 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel T32—Teleconference Review Meeting.

Date: November 15, 1999.

Time: 2 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93,865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 3, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–29376 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 15–16, 1999.

Time: 7:30 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Katherine Woodbury, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 18–19, 1999.

Time: 7:30 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Katherine Woodbury, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: December 2, 1999.

Time: 11 AM to 1 PM.

Agenda: To review and evaluate grant applications.

Place Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Lillian M. Pubols, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.8534, Biological Basis Research in Neurosciencies, National Institutes of Health, HHS)

Dated: November 3, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–29377 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel Teleconference.

Date: November 19, 1999.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharee Pepper, PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (301) 594–4933.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 3, 1999.

Anna Snouffer,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–29369 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel Teleconference.

Date: November 17, 1999.

Time: 2:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharee Pepper, PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301 Bethesda, MD 20892, (301) 594–4933.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 3, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–29370 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 1999.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22, 1999.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alec S. Liacouras, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 23, 1999.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 3, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–29374 Filed 11–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Deadline for Submitting Completed Applications to Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2001 or Calendar Year 2001

AGENCY: Office of Self-Governance, Office of the Secretary, Interior.

ACTION: Notice of Application Deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 1, 2000, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2001 or calendar year 2001.

DATES: Completed application packages must be received by the Director, Office of Self-Governance by March 1, 2000.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to the Director, Office of Self-Governance, U.S. Department of the Interior, Mail Stop 2542, 1849 C Street NW, Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfield, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street NW, Mail Shop 2548, Washington DC 20240, 202–208–5734.

SUPPLEMENTARY INFORMATION:

Under the Tribal Self-Governance Act of 1994 (Public Law 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Public Law 104–208) the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into an annual written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a BIA region and/or agency which has not previously been involved with self-governance negotiations, will take approximately two months from start to finish. Agreements for an October 1 to September 30 fiscal year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 fiscal year need to be signed and submitted by October 1.

Background

On February 15, 1995, an interim rule was published in the **Federal Register** announcing the criteria for tribes to be included in an applicant pool and the establishment of the selection process for tribes/consortia to negotiate agreements pursuant to the Tribal Self-Governance Act of 1994. This interim rule was added to Title 25 of Code of Federal Regulations at Part 1001 of Chapter VI. While it may be changed by later rulemaking, the Act stipulates that the lack of promulgated regulations will not limit its effect. It should be noted that a proposed rulemaking was negotiated between tribal and Federal members of a self-governance rulemaking committee and published in the **Federal Register** on February 12, 1998, for review and comment. Comments on the proposed rulemaking have been received. Final rules are being negotiated by the self-governance negotiated rulemaking committee and are not anticipated to be published until late Spring, 2000.

Purpose of Notice

The interim rules established at 25 CFR Parts 1001.1 to 1001.5 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2000 and calendar year 2000. Applicants should be guided by the requirements in 25 CFR Parts 1001.1 to 1001.5 in preparing their applications. Copies of the interim rules published in the Federal Register on February 15, 1995, may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2001 or calendar year 2001 must respond to this notice, except for those which are (1) currently involved with negotiations with the Department; (2) one of the 74 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

The Director's decision on the actual number of tribes that will enter negotiations will be made at a later date. Tribes already in the applicant pool will retain their existing ranking with tribes entering the applicant pool under these rules receiving a lower ranking. Being in the applicant pool will not guarantee that a tribe will actually be provided the opportunity to negotiate in any given year. However, it does mean that a tribe will not be passed over by a tribe with a lower ranking in the applicant pool or by a tribe not in the applicant pool, with the exception of a tribe already in the negotiation process.

For example, if the Department determines that five tribes will be afforded the opportunity to negotiate self-governance agreements for fiscal year 2001 and calendar year 2001, the five tribes with the highest rankings would be notified and negotiations would be scheduled. The tribe ranked sixth on the list would then have the highest ranking to negotiate a self-governance agreement for 2002 or might enter negotiations for 2001 if one of the first five tribes discontinued negotiations. In such a case, the tribe that discontinued negotiations would remain in the applicant pool with its original ranking and would be the first to be selected in 2001 for negotiating agreements commencing in 2002.

Dated: November 5, 1999.

William A. Sinclair,

Director, Office of Self-Governance.

[FR Doc. 99–29441 Filed 11–9–99; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Michael Barrett, Finley, California. The applicant wishes to establish a cooperative breeding program for the Blue-crowned pigeon (Goura cristata cristata), the Lesser blue-crowned pigeon (Goura cristata minor), the Scheepmaker's crowned pigeon (Goura scheepmakeri scheepmakeri), the Sclater's crowned pigeon (Goura scheepmakeri sclaterii), the Victoria crowned pigeon (Goura victoria victoria), and the Beccari crowned

pigeon (Goura victoria beccarii). Mr. Barrett wishes to be an active participant in this program with two other private individuals. The American Pheasant & Waterfowl Society has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: November 4, 1999.

Rosemarie Gnam,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 99–29349 Filed 11–9–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL, WYW141435]

Horse Creek Federal Coal Lease Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a Draft Environmental Impact Statement and notice of public hearing on the Horse Creek Federal Coal Lease Application in the decertified Powder River Federal Coal Production Region, Wyoming.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations and other applicable statutes, the Bureau of Land Management (BLM) announces the availability of the Draft Environmental Impact Statement (DEIS) for the Horse Creek Federal Coal Lease Application, BLM Serial Number WYW 141435, in the Wyoming Powder River Basin, and announces the scheduled date and place for a public hearing pursuant to 43 CFR 3425.4. The DEIS analyzes the impacts of issuing a Federal coal lease for the proposed Horse Creek Federal coal tract. The purpose of the hearing is to receive comments on the DEIS, the fair market value, the maximum economic recovery, and the proposed competitive sale of the coal included in the proposed Horse Creek Federal coal tract. The Horse Creek tract is being considered for sale as a result of a coal lease application received from Antelope Coal Company (ACC) on February 14, 1997. The tract includes approximately 2,838 acres containing approximately 356.5 million tons of geologically in-place Federal coal reserves in Campbell and Converse Counties, Wyoming. It was applied for as a maintenance tract for ACC's adjacent Antelope Mine located in northern Converse County, Wyoming. ACC is a subsidiary of Kennecott Energy Company.

DATES: A public hearing will be held at 7 p.m. on Wednesday, December 8, 1999, at the Holiday Inn, 2009 S. Douglas Highway, Gillette, Wyoming. An open house will start at 6:30 p.m., prior to the hearing, to answer questions related to the Federal coal leasing process and this coal lease application. Written comments on the DEIS will be accepted for 60 days following the date that the Environmental Protection Agency (EPA) publishes their notice of availability of the DEIS in the **Federal Register**. We expect that the EPA will publish that notice on November 12, 1999.

ADDRESSES: Please address written comments or requests for copies of the DEIS to the Casper District Office, Bureau of Land Management, Attn: Nancy Doelger, 1701 East E Street, Casper, Wyoming 82601, fax them to (307) 234–1525, or e-mail them to casper__wymail@blm.gov (Attn: Nancy Doelger).

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: The application for the Horse Creek Federal coal tract was filed as a maintenance tract lease-by-application (LBA) under the provisions of 43 Code of Federal Regulations (CFR) 3425.1.

On February 14, 1998, ACC filed coal lease application WYW141435 for the Horse Creek Federal coal tract with the BLM. On May 1, 1998, ACC modified the Horse Creek application. The modified Horse Creek Federal coal tract includes the following lands:

T. 41 N., R. 71 W., Sixth Principal Meridian
- Sec. 14, lots 5 to 7, inclusive, and 10 to 15, inclusive;
- Sec. 15, lots 6 to 11, inclusive, and 14 to 16, inclusive;
- Sec. 22, lots 1, 3 to 6, inclusive, and 9 to 13, inclusive;
- Sec. 23, lots 2 to 7, inclusive, and 10 to 16, inclusive;
- Sec. 25, lots 11 and 12(S½);
- Sec. 26, lots 1 to 8, inclusive, 12 and 13;
- Sec. 27, lots 1 to 3,inclusive, 5, 12 to 14, inclusive, and 16;
- Sec. 34, lots 1, 7, 8 to 10, inclusive, and 16;
- Sec. 35, lots 8 to 10 inclusive.

Containing 2,837.91 acres more or less with an estimated 356.5 million tons of geologically in-place coal.

The Antelope Mine, which is adjacent to the lease application area, has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality and an approved air quality permit from the Air Quality Division of the Wyoming Department of Environmental Quality to mine up to 30 million tons of coal per year. According to the application filed for the Horse Creek Federal coal tract, the maintenance tract would be mined to extend the life of the existing mine.

The Powder River Regional Coal Team (RCT) reviewed the Horse Creek Federal coal lease application at their meeting on April 23, 1997, in Casper, Wyoming, and recommended that it be processed. The RCT was notified in writing of the modified tract configuration.

Using the LBA process, ACC acquired maintenance coal lease WYW128322 containing approximately 617 acres and 60 million tons of coal adjacent to the Antelope Mine effective 2/1/97.

The DEIS analyzes three alternatives. The Proposed Action is to hold a competitive sealed-bid sale and issue a lease for the tract as applied for to the successful qualified bidder if the bid meets or exceeds the fair market value of the tract as determined by the BLM. The second alternative, Alternative 1, is the No Action Alternative which assumes that the tract will not be leased. The third alternative, Alternative 2, is to hold a competitive sealed-bid sale and issue a lease for the tract as modified by BLM to the successful qualified bidder if the bid meets or exceeds the fair market value of the tract as determined by the BLM.

The Office of Surface Mining Reclamation and Enforcement is a cooperating agency in the preparation of the EIS because it is the Federal agency that would review the mining plans for the tract if it is leased and recommend approval or disapproval of the mining plans to the Secretary of the Interior.

The lease application area is within the boundaries of the Thunder Basin National Grasslands and some of the surface lands in the area were formerly under the jurisdiction of the United

States and were administered by the U.S. Forest Service (USFS) as part of the Thunder Basin National Grasslands. As a result of recent land exchanges between the USFS and local landowners, however, there are no longer any surface lands within the lease application area that are under the jurisdiction of the USFS. Therefore, the USFS is not a cooperating agency in the preparation of the EIS.

During the scoping process, the issues that were identified related to this lease application included: the potential impacts to wetlands, aquifers, agricultural producers, wildlife, wildlife habitat, wildlife-based recreation, cultural resources, and access to public lands that may occur if a lease is issued for this tract; and the potential for conflict with development of existing oil and gas leases in this area, including coalbed methane. There are no existing oil and gas wells on the lease application area.

Comments, including names and street addresses of respondents, will be available for public review at the Bureau of Land Management, Casper Field Office, 1701 East E Street, Casper, Wyoming, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the final EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated, November 4, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–29408 Filed 11–9–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1220–00]

Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Central California Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Resource Advisory Council for Central California will meet at the Watershed Institute on the campus of California State University, Monterey Bay located on the former Fort Ord Army base.

DATES: Friday and Saturday, November 12–13, 1999.

ADDRESSES: Building 42, 6th Avenue and B Street, California State University, Monterey Bay Take the University exit from Highway 1 and turn left on North-South Road. Turn right on First Street, right on Sixth Avenue, left on B Street.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bureau of Land Management on public land issues. The Council will hear reports on the status of standards and guidance for grazing on federal land in California, the progress of rehabilitation work on Fort Ord, the activities of the California Wilderness Coalition, BLM management of the former Coast Dairies property on the Santa Cruz county coast near Davenport, and the potential for sage grouse to be listed as a threatened and endangered species. There will be a field trip to the Toro Creek area of Fort Ord on Friday afternoon. The public is invited to attend the meeting. Those wishing to participate in the field trip must provide their own transportation. Time will be set aside both Friday and Saturday for public comment. Anyone may discuss any public land issue with the Council at that time. Written comments will be accepted at the meeting, or at the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6010.

Dated: October 30, 1999.

Larry Mercer,

Acting Field Office Manager.

[FR Doc. 99–29381 Filed 11–9–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–00–1430–ES; AZA 31075]

Arizona: Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of public land for recreation and public purposes lease/conveyance, Mohave County, Arizona.

SUMMARY: The following described public land in Mohave County, Arizona, has been examined and found suitable for classification for lease and conveyance under the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*):

Gila and Salt River Meridian, Arizona

T. 18 N., R. 21 W.,
Sec. 7, S½NW¼NE¼, N½SW¼NE¼.
Containing 40 acres, more or less.

SUPPLEMENTARY INFORMATION: The Mohave County Board of Supervisors proposes to use the land for a county park. The land is not required for any Federal purposes. The lease and conveyance of the land for recreational and public purposes is consistent with current Bureau planning of this area and would be in the public interest.

Lease and conveyance when issued will contain the following reservation to the United States:

1. Rights-of-way for ditches and canals constructed by the authority of the United States.

And will be subject to:

1. The provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.

2. Those rights for a public road granted to Mohave Valley Elementary School District (AZA 30009).

3. All minerals are owned by Santa Fe Minerals, together with the right to prospect for, mine and remove the minerals.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, except for lease and conveyance under the R&PP Act. The mineral estate is in private ownership and is not subject to Bureau of Land Management administration.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a county park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use if consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of

development, whether the Bureau of Land Management followed proper administrative procedure in reaching the decision, or any other factor not directly related to the suitability of the land for a county park.

DATES: On or before December 27, 1999, interested parties may submit comments to the Field Manager, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Any adverse comments will be reviewed by the Arizona State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of the publication of this Notice in the **Federal Register**. The land will not be offered for lease and conveyance until after the classification becomes effective.

FOR FURTHER INFORMATION CONTACT: Land Law Examiner, Janice Easley, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406 or telephone (520) 505–1239.

Dated: November 4, 1999.

Donald Ellsworth,

Field Manager.

[FR Doc. 99–29466 Filed 11–9–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force

AGENCY: Bureau of Reclamation (Reclamation), Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting will be held on Thursday, November 18, 1999, 12:00 p.m. to 4:30 p.m. and Friday, November 19, 1999, 8:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be at the Radisson, 500 Leisure Lane, Room 304, Sacramento, California 95815. Telephone 916/922–2020 (FAX 916/649–9463).

FOR FURTHER INFORMATION CONTACT: Mr. Russell P. Smith, Chief, Environmental and Natural Resource Division, Northern California Area Office, 1639 Shasta Dam Boulevard, Shasta Lake, California 96019. Telephone: 530/275–1554 (TDD 530/450–6000).

SUPPLEMENTARY INFORMATION: The Trinity River Basin Fish and Wildlife Task Force will meet to formulate and implement the ongoing Trinity River watershed ecosystem management program for fish and wildlife. This program considers the needs of multiple species and their interactions with physical habitats in restoring the natural function, structure, and species composition of the ecosystem, recognizing that all components are interrelated.

Dated: November 5, 1999.

Lester A. Snow,

Regional Director.

[FR Doc. 99–29409 Filed 11–9–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Workforce Investment Act; Migrant and Seasonal Farmworker Employment and Training Advisory Committee: Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) as amended, notice is hereby given of the scheduled meeting of the Migrant and Seasonal Farmworker Employment and Training Advisory Committee.

Time and Date: The meeting will begin at 9:000 a.m. on December 2, 1999, and continue until approximately 4:30 p.m., and will reconvene at 9:00 a.m. on December 3, 1999, and adjourn at close of business that day. Time is reserved from 1:30 to 2:30 p.m. on December 2, 1999 for participation and presentations by members of the public.

Place: California State Capitol Building, The Speaker's Conference Room, 3rd Floor–Old Wing, 11th and L Street, Sacramento, California 95814.

Status: The meeting will be open to the public. Persons with disabilities; who need special accommodations should contact the telephone number provided below no less than ten days before the meeting.

Matters to be Considered: The agenda will focus on the following topics: Brief report of meeting of August 26, 27, 1999, Public Comment Session, Division of Seasonal Farmworker Program Report and Update, Review and adoption of the Committee's Annual Report to the Secretary.

For Further Information Contact: Alicia Fernandez-Mott, Chief, Division of Migrant and Seasonal Farmworker Programs, Office of National Programs, Employment and Training Administration, Room N–4641, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–5500.

Signed at Washington, DC, this 3rd day of November, 1999.

Anna W. Goddard,

Director, Office of National Programs, Employment and Training Administration.

[FR Doc. 99–29414 Filed 11–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0085 (2000)]

The 13 Carcinogens Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of, and increase in, the information collection requirements contained in the 13 Carcinogens Standard (29 CFR 1910.1003, 29 CFR 1915.1003, and 29 CFR 1926.1103).

Request for Comment

The Agency is particularly interested in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before January 10, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0085 (2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy,

Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in the 13 Carcinogens Standard is available for inspection and copying in the Docket Office, or mailed on request by telephoning Todd R. Owen or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR on the 13 Carcinogens Standard, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTRY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirements in the 13 Carcinogens Standard provides protection for employees from the adverse health effects associated with occupational exposure to 13 carcinogenic chemicals. This information collection request (ICR) covers the following carcinogens: 4-Nitrobiphenyl (§ 1910.1003), alpha-Naphthlamine (§ 1910.1004), methyl chloromethyl ether (§ 1910.1006), 3,′-Dichlorobenzidine (and its salts) (§ 1910.1007), bis-Chloromethyl ether (§ 1910.1008), beta-Naphthylamine (§ 1910.1009), Benzidine (§ 1910.1010), 4-Aminodiphenyl (§ 1910.1011), Ethyleneimine (§ 1910.1012), beta-Propiolactone (§ 1910.1013), 2-Acetylaminofluorene (§ 1910.1014), 4-Dimethylaminoazo-benzene (§ 1910.1015), and N-Nitrosodimethylamine (§ 1910.1016).

II. Proposed Actions

OSHA proposes to extend the Office of Management and Budget (OMB) approval for the collections of information (paperwork) contained in the 13 Carcinogens Standard at 29 CFR 1910.1003, 1915.1003, 1926.1103.

The 13 Carcinogens Standard requires employers to develop signs and labels to warn employees about the hazards associated with the 13 carcinogens. Also, employers must notify OSHA Area Directors of new regulated areas, changes to regulated areas, and incidents that occur in regulated areas. Employers must establish and implement a medical surveillance program for employees assigned to enter regulated areas. This program must inform employees of their medical examination results and provide them with access to their medical records. In addition, employers must retain employee medical records for specified time periods and provide these records to the National Institute for Occupational Safety and Health under certain circumstances.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the 13 Carcinogens Standard.

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: The 13 Carcinogens Standard.

OMB Number: 1218–0085.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 97.

Frequency: On occasion.

Average Time per Response: Time per response ranges from approximately 5 minutes (for employers to maintain records) to 5 hours (for employers to develop emergency/incident reports).

Estimated Total Burden Hours: 2,798.

Estimated Cost: (Operation and Maintenance): $86,226.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC, this 3 day of November 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–29413 Filed 11–9–99; 8:45 am]

BILLING CODE 4510–26–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, November 18, 1999 and Friday, November 19, 1999 at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC. The meeting is tentatively scheduled to begin at 9 a.m. on November 18, and 9 a.m. on November 19.

The Commission will discuss the home health prospective payment system, post acute care episode data and quality monitoring, disenrollment patterns in Medicare risk plans, Medicare+Choice plan cost analysis, rural Medicare policy issues, payments to teaching hospitals, a single update mechanism across ambulatory care settings, coverage of routine physicals, reforming payments to disproportionate share hospitals, and the care at the end of life date projects.

Agendas will be mailed on Monday, November 8, 1999. The final agenda will be available on the Commission's website (www.MedPAC.gov).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 99–29405 Filed 11–9–99; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Carry Out a New Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 1 year.

DATES: Written comments on this notice must be received by January 10, 2000 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 × 2017; or send email to splimpto@nsf.gov. 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. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of the NSF Summer Programs in Japan, the NSF Postdoctoral Research Fellowships in Japan, and the NSF–CGP Science Fellowships Program.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to carry out a new information collection for one year.

Abstract: ''Evaluation of the NSF Summer Programs in Japan, the NSF Postdoctoral Research Fellowships in Japan, and the NSF–CGP Science Fellowships Program''

Proposed Project: The National Science Foundation (NSF), through its east Asia and Pacific Program within the Division of International Programs, manages a suite of programs designed to encourage and provide international research experiences for American scientists and engineers with Japanese colleagues. This suite of programs includes the NSF–CGP Science Fellowships and the Postdoctoral Research Fellowships in Japan for Ph.D.-holding scientists, and the Summer Institute in Japan and the Monbusho Summer Program for U.S. Graduate Students in Science and Engineering.

These Programs provide opportunities for improvements in cultural sensitivity and in the knowledge of foreign scientific community infrastructure. The international collaborative experiences provided through the Programs may be ''catalytic'' by bringing scientists from a larger global pool together in ''discovery'' and ''connection,'' and by the American participants' sharing their newly-acquired knowledge, experiences and impressions with the domestic scientific community.

The purpose of the proposed program evaluation is to assess the Programs within the context of both their individually-stated objectives and the greater NSF-wide objectives. The tenth anniversary this year of the Summer Institute in Japan marks an appropriate time for a longitudinal study of program effectiveness and success, particularly with regard to the effect of an early international experience on developing research careers. The JSPS and STA Postdoctoral Fellowships and the NSF-CGP Science Fellowship have a long history (more than a decade) by which their impact on both individual careers and the scientific community can be assessed.

Use of the Information: The information will be used by NSF to assess the extent to which these approaches to developing international collaborations among young and experienced US and Asian researchers are achieving the intended programmatic goals and are consistent with the specific outcome goals defined in the context of the current NSF Strategic Plan required by the Government Performance and Results Act (GPAR) of 1993. Among NSF's outcome goals, the most relevant to its investments in developing collaborations with Asian researchers are: promoting discoveries at and across the frontier of science and engineering; facilitating connections between discoveries and their use in service to society; developing a diverse, globally oriented workforce of scientists and engineers.

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

Respondents: Individuals.

Estimated Number of Responses per Form: 1040.

Estimated Total Annual Burden on Respondents: 520 hours—1040 respondents at ½ hour per response.

Frequency of Responses: One Time.

Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 5, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 99–29458 Filed 11–9–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, November 16, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED

7212 Brief of Incident: American Airlines Flight 574, In-flight Engine Fire, Airbus A300B4–605R, N80057, San Juan, Puerto Rico on July 9, 1998 and Safety Recommendation to the FAA concerning Testing of Emergency Evacuation Systems on Transport Aircraft.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, November 12, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

Dated: November 5, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–29517 Filed 11–5–99; 4:37 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 8, 15, 22, and 29, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 8
Monday, November 8
1:30 p.m. Briefing on Integrated Review of Decommissioning Requirements (Public Meeting) (Contact: Stuart Richards, 301–415–1395)
Tuesdsay, November 9
9:00 a.m. Meeting on NRC Interactions with Stakeholders on Nuclear Materials and Waste Activities (Public Meeting). Place: NRC Auditorium, Two White Flint North
2:00 p.m. Discussion of Management Issues (Closed—Ex. 2 & 6)
Wednesdsay, November 10
9:25 a.m. Affirmation Session (Public Meeting) (if needed)
9:30 a.m. Briefing on Draft Maintenance Regulatory Guide (Public Meeting) (Contact: Richard Correia, 301–415–1009)
Week of November 15—Intenative
Friday, November 19
9:25 a.m. Affirmation Session (Public Meeting) (if needed)
Week of November 22—Tentative
Wednesday, November 24
9:25 a.m. Affirmation Session (Public Meeting) (if needed)
Week of November 29—Tentative
There are no meetings scheduled for the Week of November 29

* The Schedule for Commission Meetings Is Subject to Change on Short Notice. To Verify the Status of Meetings Call (Recording)—(301)415–1291. Contact Person for More Information: Bill Hill (301) 415–1661.

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http://www.nrc.gov/SECY/smj/scheudule.htm

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The notice is distributed by mail to several hundred subscribes; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

Secy., Tracking Officer, Office of the Secretary, 11/05/99.

[FR Doc. 99–29573 Filed 11–8–99; 2:14 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24122; File No. 812–11744]

Hartford Life Insurance Company, et al.

November 3, 1999.

AGENCY: The Securities Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''Act'') approving certain substitutions of securities.

SUMMARY OF APPLICATION: Applicants request an order to permit the substitution of shares of Hartford Advisers HLS fund, Inc. (''Advisers HLS fund'') for shares of American Century VP Advantage Fund (''VP Advantage Fund''), a series fund of American Century Variable Portfolios, Inc. (''ACVP, Inc.''), currently held by Hartford Life Insurance Company Separate Account Two (the ''Account'') to support certain variable annuity contracts (collectively the ''Contracts'') issued by Hartford.

APPLICANTS: Hartford Life Insurance Company (''Hartford'') and the Account.

FILING DATE: The application was filed on August 11, 1999, and amended and restated on October 29, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 29, 1999, 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 of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, c/o Christopher M. Grinnell, Esq., Associate Counsel, Hartford Life and Annuity Insurance Company, 200 Hopmeadow Street, Simsbury, CT 06089. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, N.W., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Jane g. Heinrichs, Senior Counsel, at (202) 942–0699, or Susan M. Olson, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, DC 20549–0102 (Tel. (202) 942–8090).

Applicant's Representations

1. Hartford is a stock life insurance company incorporated in Connecticut. Hartford is a subsidiary of Hartford Fire Insurance Company and ultimately controlled by Hartford Financial Services Group. Hartford is engaged in the business of writing individual and group life insurance and annuity contracts in all the District of Columbia. Hartford is the depositor and of the Account.

2. Hartford established the Account on June 2, 1989, as a segregated investment account under Connecticut law. Under Connecticut law, the assets of the Account attributable to the Contracts and any other variable annuity contracts through which interests in the Accounts are issued are owned by Hartford but are held separately from all other assets of Hartford for the benefit of the owners of, and the persons entitled to payments under, the Contracts and the other variable annuity contracts issued through the Account. Consequently, the assets in the Account are not chargeable with liabilities arising out of any other business that Hartford may conduct. Income, gains and losses, realized and unrealized, from the Account's assets are credited to or charged against the Account without regard to the income, gains or losses arising out of any other business that Hartford may conduct. The Account is a ''separate account'' as defined by Rule O–1(e) under the Act, and is registered with the Commission as a unit investment trust.[1] The Account is currently divided into several subaccounts. Sixteen of the subaccounts of the Account are available through the Contracts. Each subaccount invests exclusively in a corresponding management investment company. The assets of the Account support the Contracts and other variable annuity contracts issued through the Account. Interests in the Account offered through the Contracts have been registered under the Securities Act of 1933 (''1933 Act'') on Forms N–4 (File No. 33–19946 and File No. 33–59541).

3. American Century Variable Portfolios, Inc. (''ACVP, Inc.'') A

[1] File No. 811–07295.

Maryland corporation, is registered under the Act as an open-end management investment company of the series type (file No. 811–5188). ACVP, Inc. currently comprises six funds, one of which, American Century VP Advantage Fund (''VP Advantage Fund''), would be involved in the proposed substitution. ACVP, Inc. Issues a separate series of shares of beneficial interest in connection with each fund. Those shares are registered under the 1933 Act on Form N–1A (File No. 33–14567). American Century Investment Management, Inc. (''ACIM'') serves as the investment adviser to ACVP, Inc.

4. Advisers HLS Fund, a Maryland corporation, is registered under the Act as an open-end management investment company (File No. 811–03659). HL Investment Advisers, LLC (''HL Adviors'') is the investment manager to Advisers HLS Fund. In addition, under HL Advisor's general management, Wellington Management Company, LLP (''Wellington Management'') serves as investment sub-adviser to the Advisers HLS Fund.

5. ACIM, investment adviser to ACVP, Inc. and VP Advantage Fund, has informed the Applicants that it wishes to halt all management and operations associated with VP Advantage Fund. Applicants understand that VP Advantage Fund was established with the expectation that it would be offered as an investment option for variable annuity contracts and variable life insurance policies underwritten by various insurance companies. However, according to ACIM, VP Advantage Fund has not been utilized by as many insurance companies as originally anticipated. Consequently, it does not believe that VP Advantage Fund has attracted sufficient assets to grow to an efficient size. Moreover, Applicants are advised by ACIM that VP Advantage Fund is no longer being actively marketed to other insurance company separate accounts. As a consequence, the assets of VP Advantage Fund are not growing. Applicants assert that they anticipate that the size of the fund may shrink, perhaps rapidly, causing fund expenses to rise and making the fund an unsatisfactory investment option for the Contracts.

6. VP Advantage Fund seeks long-term capital growth and current income by investing approximately forty percent (40%) of its assets in equity securities, forty percent (40%) in fixed income securities and the remaining twenty percent (20%) in cash and cash equivalents. For the equity portion of the fund, the fund managers invest in stocks of companies they believe will increase in value over time. Although most of the equity portion of the fund will be invested in U.S. companies, there is no limit on the amount of assets the fund can invest in foreign companies. The fixed income and cash portions of the fund will be invested only in obligations of the U.S. government and its agencies and instrumentalities. The fixed income securities in which the fund may invest include direct obligations of the United States, such as Treasury bonds, notes and bonds and obligations (including mortgage-backed and other asset-backed securities) issued or guaranteed by agencies and instrumentalities of the U.S. government that are established under an act of Congress. Under normal market conditions, the fixed income portion is expected to have a weighted average maturity of three to ten years, and the cash portion is expected to have a weighted average maturity of six months or less. Securities will be chosen based on their income level and price stability.

7. Advisers HLS Fund seeks maximum long-term total return. The fund actively allocates its assets among three categories: equity securities, debt securities, and money market instruments. Asset allocation decisions are based on Wellington Management's judgment of the projected investment environment for financial assets, relative fundamental values, the attractiveness of each asset category, and expected future returns of each asset category. Wellington Management does not attempt to engage in short-term market timing among assets categories and asset allocation is in Wellington Management's discretion. As a result, shift in asset allocation are expected to be gradual and continuous and the fund will normally have some portion of its assets invested in each asset category. The fund may invest up to twenty percent (20%) of its total assets in securities of non-U.S. counties. The fund's investments in equity securities whose characteristics include a leadership position within an industry, a strong balance sheet, a high return on equity, sustainable or increasing dividends, a strong management team and a globally competitive position. The debt securities in which the fund may invest include securities issued or guaranteed by the U.S. government and its agencies or instrumentalities, securities rated investment grade, or if unrated, securities deemed by Wellington Management to be of comparable quality.

8. The Contracts are flexible premium group variable annuity contracts which may be marketed for issuance in connection with certain retirement programs that qualify for Federal income tax benefits under Section 401,403, 408 or 457 of the Internal Revenue Code. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable basis, fixed basis, or both.

9. Under the Contracts, Hartford reserves the right, after appropriate notice, to modify the terms of the Contracts to, among other things, reflect a change in the operation of the Account or to add or withdraw any investment options offered through the Account. Applicants assert that such rights include the right to substitute the shares of another management investment company for shares of a fund.

10. Hartford proposes to substitute shares of Advisers HLS Fund for shares of VP Advantage Fund (the ''Substitution''). The Substitution will be performed by transferring accumulated account values from the subaccount holding shares of the VP Advantage Fund to the subaccount holding shares of the Advisers HLS Fund.

11. Applicants assert that the investment objective of Advisers HLS Fund is substantially identical to that of the VP Advantage Fund. The proposed Substitution would move Contract owners currently invested in VP Advantage Fund to a much larger fund with substantially the same risk and reward characteristics. Advisers HLS Fund has had lower expense ratios than VP Advantage Fund during the last three years. In addition, while Advisers HLS Fund has the prospect of future growth, VP Advantage Fund is expected to shrink in size and to cease operations in the future as it is no longer being actively marketed to other insurance company separate accounts and is not growing. Finally, Advisers HLS Fund has had better cumulative performance over the past three fiscal years than has VP Advantage Fund.

12. The following charts show the approximate year-end net asset level, ratio of operating expenses as a percentage of average net assets, and annual total returns for each of the past three years for the VP Advantage Fund and Advisers HLS Fund:

	Net Assets at year-end (in thousands)	Expense ratio (percent)	Total return (percent)
VP Advantage fund: [2]			
1996	$25,230	.98	9.25
1997	25,244	.99	12.83
1998	26,308	1.00	17.19
Advisers HLS Fund: [3]			
1996	5,879,529	.63	16.62
1997	8,283,912	.63	24.51
1998	11,805,411	.63	24.66

[2] VP Advantage Fund pays a daily investment management fee based upon the average daily net assets of the fund at an annual rate of 1.000%

[3] Advisers HLS Fund pays a daily investment management fee based upon the average daily net assets of the fund at an annual rate of 0.616%.

13. For the foregoing reasons, Applicants propose that Contract owners currently invested in VP Advantage Fund would be better off if shares of Advisers HLS Fund are substituted for shares of VP Advantage Fund.

14. By supplements to the various prospectuses for the Contracts and the Account, Hartford will notify all owners of the Contracts of its intention to cease to offer the VP Advantage Fund subaccount and to effect the Substitution. The supplements for the Account advise Contract owners that from the date of the supplement until the date of the Substitution, Contract owners are permitted to transfer all amounts under a Contract invested in the affected subaccount on the date of the supplement to another subaccount and/or the general account available under a Contract without such transfers counting as a ''free'' transfer permitted under a Contract, if the Contracts limit or restrict transfers. The supplements also inform Contract owners that Hartford will not exercise any rights reserved under any Contract to impose additional restrictions on such transfers until at least thirty (30) days after the proposed Substitution.

15. Hartford will redeem the VP Advantage Fund shares for cash and, the same day, apply the redemption proceeds to the purchase of Advisers HLS Fund shares. The Substitution will take place at relative net asset value with no change in the amount of any Contract Owner's Contract value or death benefit or in the dollar value of his or her investment in the Account. As a result, Contract owners will remain fully invested. Contract owners will not incur any fees or charges as a result of the Substitution, nor will their rights or Hartford's obligations under the Contracts be altered in any way. All expenses incurred in connection with the Substitution, including legal, accounting and other fees and expenses, will pay by Hartford. In addition, the Substitution will not impose any tax liability on Contract owners. The Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitution than before the Substitution. The Substitution will not be treated as a transfer for purposes of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. Hartford will not exercise any right it may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least thirty (30) days following the Substitution.

16. In addition to the prospectus supplements distributed to owners or Contracts, within five (5) days after the Substitution, any Contract owner who was affected by the Substitution will be set a written notice informing them that the Substitution was carried out and that they may make one transfer of all Contract values under a Contract invested in the affected subaccount on the date of the notice to another subaccount available under their Contract without that transfer counting as one of a limited number of transfers permitted in a Contract year free of charge, if the Contract limits or restricts transfers. The notice will also reiterate the fact that Hartford will not exercise any right reserved by it under the Contracts to impose additional restrictions on transfer until at least thirty (30) days after the Substitution. If applicable, the notice as delivered in certain states may also explain that, under the insurance regulations of those states, Contract owners who are affected by the substitution may exchange their Contracts for fixed-benefit annuity contracts issued by Hartford (or one of its affiliates) during the sixty (60) days following the proposed substitution. The notice will be preceded or accompanied by a current prospectus for Advisers HLS Fund.

17. Hartford is also seeking approval of the proposed substitution from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states:

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the Substitution appears to involve a substitution of securities within the meaning of Section 26(b) of the Act and request that the Commission issue an order pursuant to Section 26(b) of the Act approving the Substitution.

3. The Contracts reserve the right for Hartford, after appropriate notice, to modify the terms of the Contracts to, among other things, reflect a change in the operation of the Account or to add or withdraw any investment options offered through the Account. Applicants assert that such rights include the right to substitute the shares of another management investment company for shares of any fund. Applicants further assert that the prospectuses for the Contracts and the Account contain appropriate disclosure of this right.

4. Applicants assert that in the case of the proposed Substitution of shares of Advisers HLS Fund for shares of VP Advantage Fund, VP Advantage Fund would be replaced with a larger fund with a substantially identical investment objective and substantially

similar risk and reward characteristics. In addition, Advisers HLS Fund has had lower expense ratios for each of the most recent three fiscal years. Further, cumulative investment performance for Advisers HLS Fund has been better than for VP Advantage Fund over the same period. Moreover, Applicants state that Advisers HLS Fund has the potential for future growth where VP Advantage Fund is not growing, is expected to shrink and to eventually close. Applicants assert that Contract owners would benefit from the proposed Substitution.

5. Applicants assert that Contract owners will not be disadvantaged by the elimination of the VP Advantage Fund subaccount and that the proposed Substitution does not materially diminish for Contract owners investment flexibility, which is a central feature of the Contracts. If the proposed Substitution is carried out, all Contract owners will continue to be permitted to allocate purchase payments and transfer Contract values between and among several subaccounts in accordance with the terms of the Contracts.

6. Applicants state that the proposed Substitution is not the type of Substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts. Moreover, Applicants state that the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. Applicants assert that the Substitution, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

7. Applicants assert that the proposed substitution is also unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. Applicants state that they also select the specific type of annuity benefits offered by Hartford under their Contract as well as other rights and privileges set forth in the Contract. Contract owners may also have considered Hartford's size, financial condition, type and its reputation for service in selecting their Contract. Applicants maintain that these factors will not change as a result of the proposed substitution.

Conclusion

Applicants assert that, for the reasons summarized above, the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–29435 Filed 11–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42092; File No. SR–NYSE–99–36]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Eliminate the Series 7B Qualification Examination and Adopt a New Interpretation to Rule 345

November 2, 1999.

I. Introduction

On August 31, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] a proposed rule change relating to the qualification requirements for Exchange Floor clerks who wish to conduct a limited public business with professional customers. The proposed rule change was published for comment in the **Federal Register** on September 29, 1999.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The NYSE proposes to amend the interpretation of its Rule 345.5 (''Employees-Registration, Approval, Records'')[4] by eliminating the Series 7B Qualification Examination and establishing the Series 7A Examination as the appropriate qualification examination for Exchange Floor clerks who wish to conduct a limited public business with professional customers. The proposed amendment would establish the Trading Assistant Examination (''Series 25'') as a prerequisite for the Series 7A Examination.

Currently, Floor clerks who want to conduct a limited public business with professional customers (*e.g.*, banks, insurance companies, and other persons included in the definition of ''professional customer'' found in the written interpretation to Exchange Rule 345.15) must first pass either the Series 7B Examination or the General Securities Representative (''Series 7'') Examination. Floor members who want to conduct a securities business with professional customers must first pass either the Series 7A Examination or the Series 7 Examination.

The Series 7B Examination includes, among other things, 25 questions addressing Exchange Floor rules and policies. However, the Exchange recently implemented the NYSE Trading Assistant Examination (''Series 25'')[5] which is designed to test the Floor clerks' basic understanding of Exchange trading rules and the underlying principles of the auction market. The proposed rule change eliminates the Series 7B Examination requirement for Floor clerks, in order to prevent duplicate testing on certain material. The Series 7A Examination will now be the appropriate qualification examination for both Floor members and Floor clerks who wish to conduct a limited public business with professional customers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[6] and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, with the requirements of Section 6(c)(3)(B) of the Act.[8] Specifically, the Commission finds that the proposed rule change fulfills the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. In addition, the proposed rule change is consistent with Section 6(c)(3)(B) of the Act,[9] which authorizes an Exchange to bar a natural

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41886 (September 20, 1999), 64 FR 52565.

[4] The interpretation to Rule 345.15 is contained in the NYSE *Interpretation Handbook*.

[5] *See* Securities Exchange Act Release No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(c)(3)(B).

[9] *Id.*

person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as prescribed by the rules of the Exchange.

Although the rule change proposes to eliminate the Series 7B Examination for Floor clerks who wish to engage in a limited public business, the subject matter included in the Series 7B is covered, in part, by the recently implemented Series 25 Examination—a required exam for all Floor clerks. Requiring Floor clerks who wish to engage in a limited public business to pass the Series 7A Examination and the Series 25 Examination (a prerequisite to the Series 7A) eliminates the testing of certain material twice, and, at the same time ensures that Floor clerks are qualified with respect to the particular subject matter currently included in the Series 7B Examination.

Because the proposed rule change will allow the Exchange to test floor clerks on its rules and policies more effectively, the proposed rule change is consistent with Section 6(c)(3)(B) of the Act,[10] which states that the Exchange is responsible for prescribing standards of training, experience and competence for persons associated with Exchange members and member organizations. The Commission believes that Series 25 and 7A Examinations would cover the appropriate subject matter and include a sufficiently broad range of topics so as to ensure an appropriate level of expertise by Floor clerks of members who want to conduct a limited public business with professional customers.[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–99–36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–29436 Filed 11–9–99; 8:45 am]

BILLING CODE 8010–01–M

[10] *Id.*

[11] *See* Exchange Rule 345.15 and the interpretation to Rule 345.15, which is contained in the NYSE *Interpretation Handbook.*

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and recordkeeping requirements under OMB review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB 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: Submit comments on or before December 10, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

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.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Military Reservist Economic Injury Disaster Loan Application.

Form No: 5R.

Frequency: On Occasion.

Description of Respondents: Small Business, which employ military reservists.

Annual Responses: 2,500.

Annual Burden: 5,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–29464 Filed 11–9–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Announcement No. 3147]

Shipping Coordinating Committee Subcommittee on Standards of Training and Watchkeeping; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, December 7th, 1999, in Room 6103, at United States Coast Guard Headquarters, 2100 2nd Street SW, Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the thirty-first session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) to be held at IMO from January 10 to 14, 2000.

The primary matters to be considered include:

a. Training and certification of maritime pilots;

b. Recognition of foreign certificates;

c. Unlawful practices associated with certificates of competency (i.e., forged certificates);

d. Record-keeping for basic safety training;

e. Medical standards for seafarers, particularly physical abilities for entry level seafarers;

f. Standard Marine Communication Phrases (SMCP);

g. Training in the use of Electronic Chart Display and Information Systems (ECDIS);

h. Guidance for training in ballast water management;

i. Guidance for ships operating in ice-covered waters;

j. Validation of an IMO model course on assessment of competence; and

k. Guidance associated with the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F Convention, as adopted by the 1995 conference; not yet ratified or in force).

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard Headquarters, Commandant (G-MSO–1), Room 1210, 2nd Street SW, Washington, DC 20593 or by calling: (202) 267–0229.

Dated: November 4, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–29477 Filed 11–9–99; 8:45 am]

BILLING CODE 4710–17–P 3

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held December 2, 1999, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., 10th floor, MacCracken Room, Washington, DC 20591, telephone 202–267–7622.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 11), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held December 2, at the Federal Aviation Administration, 800 Independence Avenue, SW., 10th floor, MacCracken Room, Washington, DC. The agenda for the meeting will include: Airport Construction Guidelines, Work Group Updates, and Rulemaking Initiatives Status Report. The December 2 meeting is open to the public but attendance is limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time. Persons wishing to present statements or obtain information should contact the Office of the Associate Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7622.

Issued in Washington, DC, on November 3, 1999.

Cathal L. Flynn,

Associate Administrator for Civil Aviation Security.

[FR Doc. 99–29479 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory on RoadRailer Trailers

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory.

SUMMARY: FRA is issuing Safety Advisory 99–03 addressing the securement of floor beam cross-members on RoadRailer± trailers in order to prevent the highway tandem wheels on these trailers from falling onto the rails on moving trains.

FOR FURTHER INFORMATION CONTACT: Gary Fairbanks, Mechanical Engineer, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, SW, RRS–14, Mail Stop 25, Washington, DC 20590 (Telephone (202) 493–6322/Fax (202) 493–6230).

SUPPLEMENTARY INFORMATION: Over the past several months, FRA has discovered that several RoadRailer± trailers operated by Triple Crown Services (Triple Crown) have experienced failures of floor beam cross-members. These cross beams connect the highway tandem wheel set to the body of the trailer via slide rails. The failure of the cross beam allows the weight of the tandem wheel set to deflect the slide rails to the point where the highway tires contact the rail. The reported failures, which to date have been isolated, were discovered while the trailer was in train formation, triggered a dragging equipment detector on a moving train, or was noticed by the crew of a passing train. At this time, there have been no reported instances of tandem wheel sets separating from the trailer, which may cause a derailment or undesired train stop. The trailers involved have been set out of their trains under controlled conditions without injury or loss of property.

FRA notified Wabash National Inc. (Wabash), the manufacturer of RoadRailer® equipment, and requested that Wabash randomly inspect trailers at the Fort Wayne, Indiana, Triple Crown facility. The first inspection was conducted on October 12, 1999, and revealed a high percentage of four-to-six-year-old trailers with one or more cross-member defects. The cross-member defects found during the inspection could be classified into four categories:

1. A weld crack at the slide rail to I-beam cross-member;

2. A crack in the cross-member I-beam flange (which usually starts at the end of a weld);

3. A crack which has progressed into the web of the I-beam from the flange; or

4. A cross-member broken into two pieces.

A second inspection was conducted at the Fort Wayne, Indiana, facility on October 14, 1999, by representatives of Wabash, Triple Crown, and FRA. A third inspection of the facility was conducted on October 27, 1999, and included representative of the Federal Highway Administration (FHWA). The results of these two inspections were consistent with the observations made in the earlier inspection.

The practice of attaching the tandem wheel set slide rails to the trailer body by welding to floor cross-member I-beam flanges has been the accepted method of highway trailer fabrication for many years. This method is currently being used by nearly all van trailer manufacturers, and is considered safe and reliable when properly applied. It should be noted that there are some RoadRailer® trailers which have been in service since January 1988 that have not exhibited signs of weld or cross-member cracking in the above noted areas. Currently, the entire fleet of Triple Crown RoadRailer® trailers are in the process of being inspected or repaired. All inbound and outbound trailers are being inspected and depending upon the condition of the trailer, it may be withheld from service, transloaded, or repaired prior to being assembled into a train. At this time, the manufacturer is considering one broken floor beam cross-member or four successive cross-members with cracks to be sufficient cause to withhold the trailer from service or repair the trailer prior to continuing it in service.

Recommended Action

Until the root cause of the floor beam cross-member failures can be determined, and the appropriate long-term repairs effectuated, FRA recommends that the following action be taken with regard to all RoadRailer®'' trailers:

- Each trailer should be inspected upon receipt at a facility from a highway motor carrier prior to being transferred to the rail mode to determine whether it has any of the following conditions:

1. One broken floor beam cross-member.

2. Four successive cross-member with cracks.

If either of the conditions are found, the trailer should be held until a repair can be made to correct the deficiency, or if loaded, the lading should be transferred to another trailer that has been inspected and found not to have any of these conditions.

- Each such inbound trailer should be inspected upon its arrival in a train prior to its transfer to the highway mode. If either of the conditions noted above are found, the trailer should be held until a repair can be made to correct the deficiency, or if loaded, the lading should be transferred to another trailer that has been inspected and found not to have any of these conditions.

FRA may modify Safety Advisory 99–03, issue additional safety advisories, or take other appropriate action to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, D.C. on November 4, 1999.

George Gavalla,

Associate Administrator for Safety.

[FR Doc. 99–29453 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on August 10, 1999, (64 FR 43419).

DATES: Comments must be submitted on or before December 10, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel Seidman, Office of Ship Construction, Maritime Administration, 400 Seventh Street, SW, Room 8311, Washington, DC 20590, telephone number—202–366–1888. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: ''Shipbuilding Orderbook and Shipyard Employment.''

OMB Control Number: 2133–0029.

Type of Request: Extension of a currently approved information collection.

Affected Public: U.S. Shipyards.

Form Number(s): MA–832.

Abstract: In accordance with Sections 210 and 211 of the Merchant Marine Act, 1936, as amended, the Maritime Administration (MARAD) is required to monitor the shipbuilding industry's health and current employment, facility utilization, and scheduling practices. The data received will facilitate the projection of future employment needs and facility availability for future shipbuilding work.

Annual Estimated Burden Hours: 400 Hours.

Addresee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20502, attention MARAD Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of MARAD, including whether the information will have practical utility; the accuracy of MARAD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: November 4, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–29402 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–99–6426]

Reports, Forms, and Information Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 10, 2000.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. John F. Oates, Jr., NHTSA 400 Seventh Street, SW, Room 5238, NSC–01,Washington, DC 20590. Mr. Oates' telephone number is (202) 366–2121. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* 23 CFR Part 1335 for Application for Section 411 State highway Safety Data and Traffic Records Improvements Incentive Grants.

OMB Control Number:

Affected Public: State Government.

Abstract: The National Transportation Equity Act for the 21st Century (TEA–21) was signed into law on June 9, 1998. The Act established a new Section 411 of Title 23, United States Code (Section 161), which offers states the opportunity to apply for incentive grants designed to help states improve the collection, storage, retrieval and analysis of traffic records data. The program identifies three basic records system components, all of which must be present if the state is to receive multiple-year grants: (1) A

committee to coordinate the development and use of highway safety data and traffic records; (2) a systematic assessment of the state's highway safety data and traffic records; and, (3) a strategic plan for the continued improvement of highway safety data and traffic records. However, TEA–21 recognizes that some states may not be able to meet all three prerequisites for multiple-year grants in the first or even second year of the Section 411 program. Accordingly, the section provides for three types of grants: an ''implementation'' grant, to each state that has all three components (a coordinating committee, a traffic records assessment within the last five years, and a developed strategic plan); an ''initiation'' grant, to each state that has a coordinating committee and a traffic records assessment within the past five years, but which has not completed development of its strategic plan; and a ''start-up'' grant, to each state that is not eligible for the other grants. Most of the information that a state is required to submit is already generated and is easily accessible. Specifically, copies of traffic records assessment reports and strategic plans are readily attainable, and routinely are filed with the sponsoring agencies. Names, addresses and organizational affiliations of the members of the traffic records coordinating committee also are usually on file or can be easily assembled.

Estimated Annual Burden: 2 hours (average), for each state that elects to apply.

Number of Respondents: 57 (all 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Marianas Islands, the Virgin Islands and the Bureau of Indian Affairs).

Issued on: November 4, 1999.

Adele Derby,

Associate Administrator for State and Community Services.

[FR Doc. 99–29350 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6092; Notice 2]

Lotus Cars Ltd.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 201

This notice grants the application by Lotus Cars Ltd. (''Lotus'') of Norwich, England, through Lotus Cars USA, Inc., for a temporary exemption from S7, Performance Criterion, of Federal Motor Vehicle Safety Standard No. 201 *Occupant Protection in Interior Impact,* as described below. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We published a notice of receipt of the application on August 24, 1999, and asked for comments (64 FR 46225) but received none.

The material below is taken from Lotus's application.

Why Lotus Says That It Needs a Temporary Exemption

In August 1995, when S7, the new head injury criteria portion of Standard No. 201, was promulgated, Lotus was owned by the Italian owners of Bugatti, a company then in bankruptcy. That year, Lotus was able to produce only 835 cars, selling 152, or 18.2%, in the United States.

This country was the primary market for the Lotus Esprit, which, by then, was an aging design. With the limited resources that it had and the uncertainties of the future, in 1996 Lotus made the decision to invest primarily in an all-new model, the Elise, and to modernize the Esprit, rather than to replace it with an all-new design. Developed on a small budget, the Elise was not designed or intended for the American market. The Esprit was fitted with a new V8 engine meeting current U.S. emissions standards.

At the end of 1996, Lotus was sold to its current owners, a group of Malaysian investors, who reviewed the company's fortunes. The Elise was becoming successful in its markets, while losses in the United States in the previous two years approached $2,000,000, primarily due to the declining appeal of the Esprit. The company's overall sales in 1996 had declined to 751, including sales of 67 Esprits in the U.S. (8.9% of total sales). Nevertheless, the new owners decided to continue in the U.S. market. Sales were marginally better in the U.S. in 1997, 72 Esprits, and vastly improved elsewhere with the great success of the Elise. Lotus sold 2414 cars in 1997 (with the U.S. sales representing only 3% of total sales, approximately the same as in 1998). However, it lost almost 2,000,000 Pounds in its 1996/7 fiscal year.

In early 1997, Lotus decided to terminate production of the Esprit on September 1, 1999, and to homologate the Elise for the American market beginning in 2000. This decision allowed it to choose the option for compliance with S7 provided by S6.1.3, Phase-in Schedule #3, of Standard No. 201, to forego compliance with new protective criteria for the period September 1, 1998–September 1, 1999, and to conform 100% of its production thereafter.

But, in addition to the new owners of Lotus, the new year saw the appointment of new CEOs of Lotus and Lotus Cars USA, with the result that a fresh look was taken at the direction of the company, and the plans of early 1997 were abandoned. In due course, new management decided to continue the Esprit in production beyond September 1, 1999, until September 1, 2002, while developing an all-new Esprit, and to remain in the American market without interruption. However, as described below, the company found itself unable to conform the current Esprit to Standard No. 201. In the meantime, the company had turned the corner with the success of the Elise, and had a net profit for its fiscal year 1997/8 of slightly more than 1,000,000 Pounds.

Lotus's Reasons Why Compliance Would Cause It Substantial Economic Hardship, and How It Has Tried in Good Faith To Comply With Standard No. 201

When Lotus decided to continue production of the Esprit, it re-engineered the car's front header rail and installed energy-absorbing material. After these modifications, the Esprit's HIC value was reduced from an already-complying 840 to 300.

However, the side rail was not so simple. The small Esprit cockpit precluded any padding from being added at that location, without compromising ingress/egress and visibility. In order to comply with Standard No. 201, the Esprit ''greenhouse'' would have to be substantially modified. Modification costs could not be recovered for the relatively few cars that would be involved in the 1999–2002 period without raising the retail price to an unacceptable level. Further, Lotus was encountering major problems sourcing design-specific energy absorbing materials without being compelled to buy a 10-year supply; it was therefore forced to consider materials being produced for high-volume users, with attendant problems.

As redevelopment plans progressed in 1998, Lotus determined that a redesign of the ''greenhouse'' for the 1999–2002 period would cost in excess of $950,000, and require retesting to confirm continued compliance of its airbag system with Standard No. 208. But the company did not have the personnel to

deploy to both the redesigned and new Esprit projects, and it has chosen to devote its human resources to the all-new Esprit.

The Elise continues to contribute to the company's newly found financial solidarity, and its cumulative net income for the past three fiscal years is 2,466,000 Pounds, or, $4,068,900 (at an exchange rate of 1.65 to 1). Although a denial of the petition would substantially reduce Lotus's net income but not result in a net loss, the decrease would come primarily at the expense of Lotus Cars USA which Lotus believes could not remain in existence without cars to sell during the period required to develop the new Esprit. Lotus estimates that it would sell 200 Esprits in the U.S. during the period of a 3-year exemption.

Lotus's Reasons Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

After 10 years of sales of the Esprit with its current body shape, Lotus knows of no head injuries suffered by occupants contacting the upper interior of the cockpit. The number of vehicles anticipated to be sold during the exemption period is insignificant in terms of the number of vehicles already on the roads. The Esprit will be in full compliance by the same date that the phase-in ends for all manufacturers and when there will be 100% compliance across the board, September 1, 2002.

If Lotus USA is required to close because of a denial, its 10 employees will be out of work. In addition, a denial is bound to affect Lotus dealers in unknown ways. An exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles.

Our Decision To Grant Lotus's Application, and the Reasons for This Decision

It is evident that Lotus Cars Ltd. has experienced severe management problems during the 1980s and 1990s with successive changes of ownership, from an independent company in the United Kingdom to an acquisition of General Motors which sold it to Bugatti of Italy, which, in turn, on the verge of bankruptcy, accepted an offer from a group of Malaysian investors. The company's fortunes and product decisions were necessarily affected by these continuing changes which, in themselves, worked an understandable hardship upon the core company, Lotus Cars Ltd. We note, also, that in the years 1996–97 Lotus sold a total of less than 150 cars in the United States through Lotus Cars U.S.A.

We accept, therefore, Lotus's arguments that it had intended to remove the Esprit from the American market at the end of the delayed optional compliance date of September 1, 1999, but, as a result of a subsequent management decision, now must retain it in the U.S. to assist it in its continuing recovery while a new Esprit is prepared, and to enable its American subsidiary, Lotus Cars USA, to remain viable. We note that it is the only Lotus offered in the U.S. market, and that the applicant's estimate of a total of 200 Esprit sales over the next three years is consistent with the sales figures of this model in recent years. We understand that the next generation Esprit is being designed to comply with S7, as of the date that all vehicles must comply with the standard, September 1, 2002. Accordingly we find that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

We concur that an exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles. We note Lotus's remark that it knows of no head injuries suffered by occupants contacting the upper interior of the Esprit cockpit during the production run of the current vehicle, and that the small number of vehicles anticipated to be covered by the exemption further reduces the number of occupants to possibility of injury. Accordingly we also find that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety.

For these reasons, Lotus Cars Ltd. is hereby granted NHTSA Temporary Exemption No. 99–12 from S7 Performance criterion of 49 CFR 571.201 Standard No. 201 Occupant Protection in Interior Impact. This exemption applies only to the Esprit model that is currently in production, and expires on September 1, 2002.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50)

Issued on: November 3, 1999.

L. Robert Shelton,

Executive Director.

[FR Doc. 99–29366 Filed 11–9–99; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Wednesday
November 10, 1999

Part II

Securities and Exchange Commission

17 CFR Part 200 et al.

Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings; Final Rule

Regulation of Takeovers and Security Holder Communications; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 239, 240, 249 and 260

[Release Nos. 33–7759, 34–42054; 39–2378, International Series Release No. 1208; File No. S7–29–98]

RIN 3235–AD97

Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission today is adopting tender offer and Securities Act registration exemptive rules for cross-border tender and exchange offers, business combinations, and rights offerings relating to the securities of foreign companies. The purpose of the exemptions is to facilitate U.S. investor participation in these types of transactions.

EFFECTIVE DATE: January 24, 2000, except §§ 200.30–1(e)(16) and 200.30–3(a)(68) will be effective November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis O. Garris, Chief, or Laura Badian, Special Counsel, Office of Mergers and Acquisitions, Division of Corporation Finance at (202) 942–2920; James Brigagliano, Florence Harmon, Irene Halpin, or Michael Trocchio, Office of Risk Management and Control, Division of Market Regulation, at (202) 942–0772; at Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

SUPPLEMENTARY INFORMATION: We are adopting new Rules 800, 801 and 802 under the Securities Act of 1933 (''Securities Act''),[1] Rule 4d–10 under the Trust Indenture Act of 1939 (''Trust Indenture Act''),[2] revisions to Form F–X and Rule 144 under the Securities Act,[3] revisions to Rules 13e–3, 13e–4, 14d–1, 14d–9, and 14e–2[4] under the Securities Exchange Act of 1934 (''Exchange Act''),[5] portions of new Rule 14e–5[6] under the Exchange Act, and Rules 30–1 and 30–3[7] of the Commission's Rules Delegating Authority to the Directors of the Division of Corporation Finance and Market Regulation, respectively. We are also adopting new Form CB under the Securities Act and the Exchange Act.

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Appendix A—Form CB Tender Offer/Rights Offering Notification Form

I. Executive Summary

A. Summary of Amendments

U.S. security holders are often excluded from tender and exchange offers, business combinations and rights offerings involving foreign private issuers. It is very common for bidders to exclude U.S. security holders from these transactions to avoid the application of the U.S. securities laws, particularly when U.S. security holders own a small amount of the securities of the foreign private issuer.[8] When bidders exclude U.S. security holders from tender or exchange offers, they deny U.S. security holders the opportunity to receive a premium for their securities and to participate in an investment opportunity. Similarly, when issuers exclude U.S. security holders from participation in rights offerings, U.S. security holders lose the opportunity to purchase shares at a possible discount from market price. U.S. investors must react to these transactions, which may significantly affect their existing investment in the foreign private issuer, without the disclosure or other protections afforded by U.S. or foreign law.

Today, the Commission is adopting exemptive rules that are intended to encourage issuers and bidders to extend tender and exchange offers, rights offerings and business combinations to the U.S. security holders of foreign private issuers. The purpose of the exemptions adopted today is to allow U.S. holders to participate on an equal basis with foreign security holders. In the past, some jurisdictions have permitted exclusion of U.S. holders despite domestic requirements to treat all holders equally on the basis that it would be impracticable to require the bidder to include U.S. holders. The rules adopted today are intended to

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 77aaa *et seq.*

[3] 17 CFR 239.42 and 17 CFR 230.144.

[4] 17 CFR 240.13e–3, 240.13e–4, 240.14d–1, 240.14d–9 and 240.14e–2.

[5] 15 U.S.C. 78a *et seq.*

[6] The portion of the text of new Rule 14e–5 (formerly Rule 10b–13) that is being adopted today is contained in a separate release that updates and simplifies the rules and regulations applicable to takeover transactions. See Regulation of Takeovers and Security Holder Communications, Securities Act Release No. 7760 (October 22, 1999) (''Regulation M–A Release'').

[7] 17 CFR 200.30–1 and 200.30–3.

[8] As we noted in the proposing release, Cross-Border Tender Offers, Business Combinations and Rights Offerings, Securities Act Release No. 7611 (November 13, 1998) (63 FR 69136) (Section II.A.), because a large percentage of foreign companies have only a small number of U.S. security holders, it is quite common for bidders for the securities of those foreign companies to exclude U.S. holders. For example, based on a sample of 31 tender offers compiled in 1997 by the U.K. Takeover Panel (the entity that regulates tender offers in the United Kingdom), when the U.S. ownership of the target was less than 15% (30 offers), the bidders excluded U.S. persons in all of the offers. When the U.S. ownership was more significant, such as 38% (one offer), the bidders included U.S. persons. In the 30 offers that excluded U.S. persons, the ownership percentage was as follows: In 27 offers, U.S. persons held less than 5%; in the remaining three offers, U.S. persons held 7%, 8% and 10–15%, respectively.

eliminate the need for such disadvantageous treatment of U.S. investors.

The exemptions balance the need to provide U.S. security holders with the protections of the U.S. securities laws against the need to promote the inclusion of U.S. security holders in these types of cross-border transactions. The specific exemptions are:

- Tender offers for the securities of foreign private issuers will be exempt from most provisions of the Exchange Act and rules governing tender offers [9] when U.S. security holders hold 10 percent or less of the subject securities. In addition to bidders, the subject company, or any officer, director or other person who otherwise would have an obligation to file Schedule 14D–9 also may rely on the exemption. We refer to this exemptive relief in this release as the ''Tier I'' exemption.
- When U.S. security holders hold 40 percent or less of the class of securities of the foreign private issuer sought in the offer, limited tender offer exemptive relief will be available to bidders to eliminate frequent areas of conflict between U.S. and foreign regulatory requirements. We refer to this exemptive relief in this release as the ''Tier II'' exemption. The Tier II exemption represents a codification of current exemptive and interpretive positions.
- Under new Securities Act exemptive Rule 801, equity securities issued in rights offerings by foreign private issuers will be exempt from the registration requirements of the Securities Act, if U.S. security holders own 10 percent or less of the issuer's securities that are the subject of the rights offering.
- Under new Securities Act exemptive Rule 802, securities issued in exchange offers for foreign private issuers' securities and securities issued in business combinations involving foreign private issuers will be exempt from the registration requirements of the Securities Act and the qualification requirements of the Trust Indenture Act, if U.S. security holders hold 10 percent or less of the subject class of securities.
- Tender offers for the securities of foreign private issuers will be exempt from new Rule 14e–5 [10] (formerly Rule 10b–13) of the Exchange Act, which prohibits a bidder from purchasing securities otherwise than pursuant to the tender offer. This exemption will allow purchases outside the tender offer during the offer when U.S. security holders hold 10 percent or less of the subject securities.

The U.S. anti-fraud and anti-manipulation rules and civil liability provisions will, however, continue to apply to these transactions. Certain commenters believed that this liability will remain a hurdle to including U.S. security holders, particularly in view of the amount of litigation in the United States and the ability of subject companies to institute litigation as a defensive measure. However, in a transaction eligible for the exemptions adopted today, many of the disclosure and procedural protections of the federal securities laws will not be available. Therefore, it is necessary that the anti-fraud provisions continue to provide a basic level of protection for U.S. security holders participating in these transactions. The application of these provisions, however, may be different in the context of foreign disclosure requirements and practices. The Commission considers the information that is required to be disclosed by a form or schedule generally to be important in investment decisions. However, the omission of the information called for by U.S. forms in the context of foreign disclosure requirements and practices would not necessarily violate the U.S. disclosure requirements. An antifraud action could be brought by the Commission and investors if the omitted information is material in the context of the transaction and the disclosure provided is misleading as a result of the omission of the information.

In addition to the above exemptions, we are adopting amendments to the Commission's general organization rules. These amendments delegate to the Directors of the Divisions of Corporation Finance and Market Regulation authority to exempt tender offers from specific tender offer requirements. The delegation of authority is intended to conserve Commission resources by permitting the staff to review and act on exemptive applications under sections 14(d) and 36(a) [11] of the Exchange Act when appropriate. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate. In addition, under section 4A(b) [12] of the Exchange Act, the Commission retains discretionary authority to review, upon its own initiative or upon application by a party adversely affected, any exemption granted or denied by the Division pursuant to delegated authority.[13]

B. Changes From the 1998 Proposals

The rules adopted today differ from those contained in the November 1998 proposing release [14] in significant respects. These modifications are being made in response to comments we received on the proposals.[15] The following is a list of the most important changes from the proposals:

- Offerors may offer cash to U.S. persons and securities to non-U.S. persons in a Tier I tender offer without violating the equal treatment requirements of that exemption.
- The Tier II exemption has been revised to harmonize it with the amendments to the tender offer rules (''Regulation M–A'') that also are being adopted today in a separate release.[16]
- The U.S. ownership limitations for the exemptions from the Securities Act registration requirements for exchange offers, business combinations and rights offerings have been increased from five to 10 percent.
- Securities held by all persons owning 10 percent or more of the outstanding securities, as well as the securities held by the offeror, are excluded from the calculation of the percentage of the class held by U.S. owners, rather than securities owned by just foreign 10 percent holders, as proposed.
- Securities purchased in a rights offering conducted under Rule 801 will only be restricted to the extent that the securities held by the U.S. holder at the time of the offering were restricted.
- We have modified the method of determining U.S. ownership. An offeror must ''look through'' the record ownership of certain brokers, dealers, banks or nominees holding securities of the subject company for the accounts of their customers to determine the percentage of the securities held in nominee accounts that have U.S. addresses. We are adopting, with minor

[9] 15 U.S.C. 78m(e) and 78n(d); 17 CFR 240.13e–3, 240.13e–4, 240.14d–1 to 240.14d–10, 240.14e–1 and 240.14e–2.

[10] Rule 10b–13 was revised and redesignated as new Rule 14e–5 in the Regulation M–A Release, *supra* note 6.

[11] 15 U.S.C. 78mm(a).

[12] 15 U.S.C. 78d–1(b).

[13] Information concerning the filing of exemptive relief applications can be found in Release No. 34–39624; Rule 0–12 under the Exchange Act (17 CFR 240.0–12).

[14] *See* the proposing release, *supra* note 8. Similar exemptions were originally proposed in International Tender and Exchange Offers, Securities Act Release No. 6897 (June 5, 1991) (56 FR 27582) and Cross-Border Rights Offers, Securities Act Release No. 6896 (June 4, 1991) (56 FR 27564).

[15] We received 19 letters of comment on the 1998 proposals. Those letters can be obtained for public inspection and copying by requesting File No. S7–29–98 through our public reference room in Washington DC. Electronically submitted comments are available on our Internet web site (http://www.sec.gov).

[16] Regulation M—A Release, *supra* note 6.

changes, the proposal that a third-party bidder in an unsolicited or ''hostile'' tender offer may rely upon a presumption that the U.S. ownership percentage limitations of the Tier I, Tier II and Rule 802 exemptions are not exceeded based on the relative level of trading volume in the United States. We are not adopting the proposed rebuttable presumption that persons holding through ADR facilities are U.S. holders.

- In order to provide a level playing field in the case of competing offers, we have provided that if an offeror commences a tender offer or a business combination during an ongoing tender offer or business combination for securities of the same class that is the subject of its offer, the second offeror will be eligible to use the same exemption (Tier I, Tier II, or Rule 802) as the prior offeror, so long as all the conditions of the exemption, other than the limitation on U.S. ownership, are satisfied by the second offeror. In light of this change, we are not adopting the proposal that if an offeror commences an offer during an ongoing tender or exchange offer for securities of the same class that is the subject of its offer, the offeror could calculate the percentage of subject securities held by U.S. holders as of the same date used by the initial offeror.

- We provide guidance regarding when bidders can provide information on the Internet about offshore tender and exchange offers without triggering U.S. requirements.

- The Tier I and Tier II tender offer exemptions are available if the subject company is a closed-end investment company that is registered under the Investment Company Act of 1940 (the ''Investment Company Act'').[17] As proposed, the Tier I and Tier II tender offer exemptions would not have been available if the subject company was any type of investment company registered or required to be registered under the Investment Company Act.

- The registration exemptions for rights offerings, business combinations and exchange offers provided by Rules 801 and 802 are available for securities issued by closed-end investment companies that are registered under the Investment Company Act. As proposed, Rules 801 and 802 would not have been available for securities issued by any type of investment company, whether foreign or domestic, that is registered or required to be registered under the Investment Company Act.

[17] 15 U.S.C. 80a–1 *et seq.*

II. Discussion

A. The Tier I Exemption

Under the Tier I exemption adopted today, eligible issuer and third-party tender offers will not be subject to Rules 13e–3, 13e–4, Regulation 14D or Rules 14e–1 and 14e–2. These provisions contain disclosure, filing, dissemination, minimum offering period, withdrawal rights and proration requirements that are intended to provide security holders with equal treatment and adequate time and information to make a decision whether to tender into the offer. The Tier I exemption provides that tender offers for the securities of foreign private issuers are exempt from these U.S. tender offer requirements, so long as:

- U.S. security holders hold 10 percent or less of the class of securities sought in the tender offer;
- In the case of an offer that otherwise would be subject to Rule 13e–4 or Regulation 14D under the Exchange Act, bidders submit, rather than file, an English language translation of the offering materials to the Commission under cover of Form CB and, in the case of a foreign offeror, file a consent to service on Form F–X;
- U.S. security holders participate in the offer on terms at least as favorable as those offered to any other holders; and
- Bidders provide U.S. security holders with the tender offer circular or other offering documents, in English, on a comparable basis to that provided to other security holders.

The exemption is available to U.S. and foreign bidders. The domicile or reporting status of the bidder is not relevant. Instead of complying with the U.S. tender offer rules, a bidder taking advantage of the exemption will comply with any applicable rules of the foreign subject company's home jurisdiction or exchange.

1. U.S. Ownership Limitation

We are adopting, as proposed, 10 percent as the maximum level of ownership by U.S. security holders that a subject company can have and be eligible for the Tier I exemption.[18] Under the proposals, we solicited comment on whether to increase the 10 percent limitation for U.S. ownership to 15 or 20 percent. Commenters on the proposals largely favored adopting a higher eligibility percentage. We have decided, however, that 10 percent is an appropriate level of U.S. ownership for exclusive reliance on home jurisdiction requirements. At and below that level of U.S. ownership, broad-based exemptions are necessary to encourage inclusion of U.S. security holders.[19] We believe that U.S. holders' interests are best served by being able to participate in, rather than being excluded from, the tender offer, even though they do not receive the full protections of the U.S. tender offer rules. Above the 10 percent level of U.S. ownership, more tailored relief of the type permitted by the new Tier II exemption would address conflicting regulatory mandates and offering practices.

We also believe that it is appropriate to set the Tier I and Securities Act registration exemption limit on U.S. ownership at the same percentage to level the playing field for stock and cash tender offers. As discussed below, we have decided to raise the ownership level for the Securities Act exemption from five to 10 percent. As a result, an exchange offer would be exempt both from the tender offer and Securities Act registration requirements if U.S. security holders hold 10 percent or less of the subject company's securities.

In order to provide a level playing field in the case of competing offers, we also believe it is appropriate to provide that if a bidder commences a tender offer or a business combination during an ongoing tender offer or business combination for securities of the same class that is the subject of its offer, the second bidder will be eligible to use the same exemption (Tier I, Tier II, or Rule 802) as the prior offeror provided that all the conditions of the exemption, other than the limitation on U.S. ownership, are satisfied by the second bidder. Thus, if the initial bidder relies on the Tier I exemption to make a tender offer, a subsequent competing bidder would not be subject to the 10 percent ownership limitation condition of the Tier I exemption. As a result, the second bidder will not be disadvantaged by any movement of securities into the United States following the announcement of the initial offer.

Neither the Tier I nor the Tier II tender offer exemption is available for any transaction or series of transactions that technically complies with the exemption but is part of a plan or scheme to evade the tender offer provisions of the Exchange Act.[20] For example, if an initial offer is commenced solely as a pretext for making a subsequent offer automatically eligible for the exemption, the Tier I exemption would not be available.

[18] *See* Section II.F. *infra* for a discussion of how U.S. ownership is determined.

[19] *See* the proposing release, *supra* note 8, at note 15.

[20] *See* Instruction 4 to paragraphs (h)(8) and (i) to revised Rule 13e–4 and Instruction 5 to paragraphs (c) and (d) of revised Rule 14d–1.

2. Disclosure and Dissemination—Form CB

We are adopting, as proposed, the requirement that a bidder or issuer relying on the Tier I exemption submit any offering materials prepared under foreign law to the Commission for notice purposes only, under cover of Form CB.[21]

The requirement to submit a Form CB only applies if the tender offer would have been subject to Regulation 14D or Rule 13e–4, but for the Tier I exemption. If the tender offer would have been subject only to section 14(e) and Regulation 14E, the offering document and any recommendation do not need to be submitted to the Commission because the current regulations do not require a filing in connection with those offers.[22] The materials submitted under cover of Form CB will not be deemed filed with the Commission. Therefore, the person submitting the materials will not be subject to the express liability provisions of Section 18 of the Exchange Act.[23]

Form CB must be received by the Commission no later than the next business day after the publication or dissemination of the offering circular or disclosure document being filed under cover of Form CB. Thus, filing persons will have one extra day from the date the offering circular or disclosure document is first published, sent or given to security holders to submit the offering circular or disclosure document to the Commission. If the bidder is a foreign company, it must also file a Form F–X with the Commission at the same time as the submission of the Form CB to appoint an agent for service in the United States. Form F–X, which was adopted in 1991, has been modified to reflect its use in connection with the submission of a Form CB.

A number of commenters argued that Forms CB and F–X would be too burdensome and would discourage offerors from relying on the exemptions. We believe, however, that our interest in monitoring the availability of the exemptions and ensuring that U.S. security holders have access to these documents through their public availability and meaningful recourse for fraudulent statements in the documents justify the minimal burdens of preparing these forms. We will not require the payment of a filing fee with the submission of a Form CB or the filing of a Form F–X.

We are adopting, as proposed, the requirement that offerors disseminate any tender offer circular or other informational document to U.S. security holders in English on a comparable basis to that provided to security holders in the foreign subject company's home jurisdiction. If the foreign subject company's home jurisdiction permits dissemination solely by publication, the offeror likewise will publish the offering materials simultaneously in the United States, although it may in addition mail the materials directly to U.S. holders. If the materials are disseminated by publication, the offeror must publish the materials in a manner reasonably calculated to inform U.S. investors of the offer.[24]

3. Equal Treatment

Offerors relying on the Tier I exemption must permit U.S. security holders to participate in the offer on terms at least as favorable as those offered to any other holders of the subject securities, subject to certain exceptions for exchange offers, as discussed below. In addition, equal treatment requires that the procedural terms of the tender offer, that is, duration, pro rationing, and withdrawal rights, must be the same for all security holders.[25]

a. Cash Alternative

The proposals would have required as a condition to the Tier I exemption that U.S. security holders be offered the same amount and form of payment, including securities if offered elsewhere. We solicited comments on whether the exemption should permit U.S. security holders to be offered only cash, even if non-U.S. security holders are offered consideration consisting at least partly of securities. Commenters generally believed that we should permit cash-only consideration to be paid to U.S. security holders to avoid the exclusion of U.S. security holders from cross-border tender offers. We agree. As adopted, U.S. holders may be offered only cash, but the bidder must have a reasonable basis to believe that the cash is substantially equivalent to the value of the securities and any cash or other consideration offered to non-U.S. holders.[26]

To assure that U.S. security holders receive substantially equivalent value for their securities, if the offered security is not a ''margin security'' within the meaning of Regulation T,[27] the offeror must provide upon the request of the Commission or a U.S. security holder an opinion from an independent expert stating that the cash-only consideration is substantially equivalent to the securities and any cash offered outside the United States.[28] If the offered security is a ''margin security'' within the meaning of Regulation T, an opinion would not be required.[29] Instead, the offeror must undertake to provide any U.S. holder or the Commission staff upon request information on recent trading prices of the offeror's securities.

The American Bar Association objected to requiring a valuation opinion because it would raise significantly the cost to issuers and bidders and consequently discourage them from including U.S. security holders in a tender offer.[30] We believe, however, that an offeror seeking to use this exception to avoid issuing securities to U.S. holders would not find this requirement excessively burdensome, particularly when the

[21] The subject company, or any officer, director or other person who otherwise would have an obligation to file a Schedule 14D–9, may satisfy that obligation by submitting the recommendation to the Commission on Form CB.

[22] Financial statements submitted under cover of new Form CB that comply with the accounting requirements of the filer's home jurisdiction need not be reconciled to U.S. generally accepted accounting principles, regardless of whether the Form CB is submitted in connection with a Tier I exempt offer or under new Rule 801 or 802.

[23] 15 U.S.C. 78r.

[24] *Cf.* Exchange Act Rule 14d–4(b) [17 CFR 240.14d–4(b)].

[25] The fact that a foreign security trades in the United States in the form of an American Depositary Receipt (ADR), and the ADR depositary requires holders to provide it with instructions to tender into the offer a reasonable time before the close of the offer, or imposes fees in connection with the tender, would not contravene this condition.

[26] Revised Rules 13e–4(h)(8)(ii)(C) and 14d–1(c)(iii). The determination should be made at the commencement of the offer. The amount of cash consideration must be adjusted during the term of the offer only if the bidder no longer has a reasonable basis to believe the cash is substantially equivalent to the value of the securities offered to non-U.S. holders, for example, if the bidder increase the offer price.

[27] (12 CFR 220.2). The definition of a ''margin security'' in Regulation T, which is issued by the Board of Governors of the Federal Reserve System pursuant to the Exchange Act, inlcudes ''foreign margin stock.'' Foreign margin stock'' comprises both securities on the Federal Reserve Board's List of Foreign Margin Stocks and those deemed to have a ''ready market'' for net capital purposes under Rule 15c3–1 (17 CFR 240.15c3–1) under the Exchange Act. All stocks that appear on the Financial Times/Standard & Poor's World Actuaries Indices (FR/S&P Indices) are effectively treated as having a ''ready market'' for net capital purposes. *See Securities Credit Transactions; Borrowing by Brokers and Dealers*, 63 FR 2806 (January 16, 1998) at II.B.2.

[28] The opinion would address only the relative values of the cash and non-cash consideration offered to investors for the subject securities. The opinion would not need to address the fairness of either form of consideration in relation to the value of the subject securities.

[29] We believe that securities that are ''margin securities'' under Regulation T would be sufficiently liquid so that a U.S. investor should be able to ascertain the market value of the offered securities.

[30] *See* comment letter dated March 2, 1999, *supra* note 15.

opinion is required only when the offered security is not a ''margin security'' within the meaning of Regulation T. On the other hand, an independent opinion would provide reasonable assurance that U.S. security holders are receiving equivalent value to that offered to non-U.S. holders.

In many cases, foreign jurisdictions will not allow the bidder to offer U.S. holders cash when that option is not provided in all other jurisdictions. In addition, the bidder may not have sufficient cash to fund such an offer. Some bidders have used a ''vendor placement,'' in which U.S. holders agree to appoint an independent agent to receive the securities offered in an exchange offer and sell them immediately into an existing offshore trading market for those securities. The agent would then remit the proceeds, minus expenses, to the U.S. holders. The staff has granted no-action relief under the Securities Act registration requirements and the equal treatment requirement of Rule 14d-10 to qualifying vendor placements.[31] That procedure will continue to be available under appropriate circumstances.

b. Blue Sky Exemption

If the offeror has determined to offer securities to all U.S. holders on the basis of the new Rule 802 exemption, the offeror may exclude subject company security holders residing in any state that does not provide an exemption from registration or qualification under the state blue sky law. Similarly, if the offeror registers securities under the Securities Act, the offeror may exclude subject company security holders residing in any state that refuses to register or qualify the offer and sale of securities in that state after a good faith effort by the offeror.

In both cases, however, the offeror must offer those security holders cash consideration instead of excluding them, if it has offered cash consideration to security holders in another state or in a jurisdiction outside the United States. The offeror must offer the cash consideration only if it is offering a cash-only alternative consideration—not merely a partial cash/partial securities form of consideration.

c. Loan Notes

Finally, we are adopting, as proposed, the exception to the equal treatment requirement providing that the offeror does not need to offer a ''loan note'' alternative to U.S. security holders. Loan notes, common in the United Kingdom, are short-term notes that may be redeemed in whole or in part for cash at par on any interest date in the future. The purpose of the loan notes is the deferral of the recognition of income and capital gains on the sale of securities under foreign tax laws. Since this tax benefit is not available to U.S. security holders, a bidder would not need to offer loan notes to U.S. security holders.

4. Rule 13e–3 Exemption

We are adopting, as proposed, the exemption from the Commission's going private disclosure requirements under Rule 13e–3 for transactions eligible for the Tier I exemption. Rule 13e–3 mandates the filing of a Schedule 13E–3. Schedule 13E–3 requires disclosure about the fairness to unaffiliated security holders of the transaction that may cause an equity security to lose its public trading market. As we noted in the proposing release, we believe this exemption is appropriate because it may not be practical to impose Rule 13e–3 procedural, disclosure and filing requirements when there are no other U.S. requirements, including dissemination and disclosure requirements. Rule 13e–3 will continue to apply to offers subject to the Tier II exemptions.

5. Sections 13(d), 13(f) and 13(g)

The rules adopted today would not affect the beneficial ownership reporting requirements of Sections 13(d), 13(f) and 13(g) of the Exchange Act.[32] We solicited comment on whether those provisions should apply to non-U.S. persons owning securities in foreign private issuers. We also solicited comment on whether these rules should apply only if U.S. ownership exceeded a certain percentage. Two commenters believed that these rules should not apply where the security holder bought the shares of a foreign private issuer on a foreign market. These commenters pointed to evidence of uneven compliance with those requirements in that situation as evidence that the scope of the Exchange Act's beneficial ownership disclosure requirements are not widely understood outside the United States. The American Bar Association, on the other hand, submitted a comment letter that urged that the beneficial ownership reporting requirements continue to apply. The ABA did not believe that the application of these requirements to offshore purchases of foreign securities presents a serious compliance problem or that the current approach is an impediment to cross-border transactions.[33]

We believe that the need for disclosure of the ownership and control of reporting companies trading in our markets, domestic and foreign, justifies any burdens related to filing reports under those rules.

B. The Tier II Exemption

Commenters generally supported the proposed scope and conditions of the Tier II exemption, under which offerors would be entitled to limited relief from the U.S. tender offer rules to minimize conflicts with foreign regulatory schemes. This relief will be available for both issuer and third party tender offers when the subject company is a foreign private issuer and U.S. ownership is no greater than 40 percent. The offeror must comply with the remaining tender offer provisions, including the procedural, disclosure, and filing requirements of the Williams Act. Because the offeror would file a Schedule TO,[34] a Form CB or F–X is not required. We are adopting the Tier II exemption with some modifications from the 1998 proposals, because some of the relief contained in the 1998 proposals is no longer necessary due to the amendments adopted today in the Regulation M–A Release.

First, as with Tier I, in order to provide a level playing field in the case of competing offers, if the initial offeror relies on the Tier II exemption to make a tender offer, a subsequent competing bidder would not be subject to the 40 percent ownership limitation condition of the Tier II exemption.

Second, the proposal that a cross-border tender offer would commence only upon mailing or publishing the offer rather than upon announcement is no longer necessary. In the Regulation M–A Release, we have repealed the requirement that a cash tender offer commence or be withdrawn within five business days of announcement. Instead, an offer commences once the bidder disseminates transmittal forms or discloses instructions on how to tender into an offer.[35] Only then is the bidder required to file the Schedule TO. Therefore, separate relief for foreign offers is not necessary.

Third, the proposal that a bidder could terminate withdrawal rights in a cross-border tender offer once all

[31] *See* the staff no-action letters *TABCORP Holdings Limited* (Aug. 27, 1999), *Durban Roodepoot Deep, Limited* (Feb 23, 1999), and *AMP Limited* (Sept. 17, 1998).

[32] 15 U.S.C. 78m(d), 78m(g), and 78m(f).

[33] *Supra* note 30.

[34] Schedules 13E–4 and 14D–1, the schedules previously used for issuer and third-party tender offers, respectively, have been combined into new Schedule TO in the Regulation M–A Release, *supra* note 6.

[35] Revised Rule 14d–2.

conditions were satisfied and keep the offer open for acceptances only is also not necessary. The Regulation M–A Release adopted a similar proposal to allow third-party bidders to provide at their election for a ''subsequent offering period'' without withdrawal rights and made it applicable to both domestic and foreign transactions.[36] Regulation M–A provides, in part, that bidders that include a subsequent offering period must promptly pay for tendered securities and announce the approximate number and percentage of outstanding securities that were deposited by the close of the initial offering period no later than 9:00 a.m. Eastern time on the next business day after the scheduled expiration date of the initial offering period and immediately begin the subsequent offering period. We have clarified that bidders relying on the Tier II exemption will satisfy the foregoing requirements if the bidder pays for tendered securities and makes the announcement in accordance with the law or practice of the bidder's home jurisdiction and the subsequent offering period commences immediately following such announcement.[37] The bidder would not have to extend withdrawal rights during the period between the close of the offer and the commencement of the subsequent offering period. Otherwise, separate relief for foreign offers is not necessary.

We are adopting the Tier II provisions relating to the All-Holders/Best Price provisions,[38] notice of extensions,[39] prompt payment,[40] and the interpretation regarding a waiver or reduction of minimum conditions as proposed. Under our interpretation on changes to the minimum condition, we will not object if bidders meeting the requirements for the Tier II exemption reduce or waive the minimum acceptance condition without extending withdrawal rights during the remainder of the offer (unless an extension is required by Rule 14e–1), if the following conditions are met:

- The bidder must announce that it may reduce the minimum condition five business days prior to the time that it reduces the condition. A statement at the commencement of the offer that the bidder may reduce the minimum condition is insufficient;
- The bidder must disseminate this announcement through a press release and other methods reasonably designed to inform U.S. security holders, which could include placing an advertisement in a newspaper of national circulation in the United States;
- The press release must state the exact percentage to which the acceptance condition may be reduced and state that a reduction is possible. The bidder must declare its actual intentions once it is required to do so under the regulations of the home jurisdiction;
- During this five-day period, security holders who have tendered their shares in the offer will have withdrawal rights;
- This announcement must contain language advising security holders to withdraw their tenders immediately if their willingness to tender into the offer would be affected by a reduction of the minimum acceptance condition;
- The procedure for reducing the minimum condition must be described in the offering document; and
- The bidder must hold the offer open for acceptances for at least five business days after the revision or waiver of the minimum acceptance condition.

Apparently because the Tier II proposals were codifications of exemptive and interpretive positions that we currently apply in cross-border acquisitions, they did not result in significant comment. To the extent that an offeror needs additional relief from that provided in Tier II, the staff, pursuant to delegated authority, will consider applications for exemptions on a case-by-case basis.[41]

C. Other Rules Governing Tender Offers

1. Rule 14e–5 (Former Rule 10b–13)

We are adopting two new exceptions to new Rule 14e–5. In the proposing release, we proposed to amend then Rule 10b–13 under the Exchange Act to facilitate the inclusion of U.S. security holders in tender offers for foreign securities by adding two exceptions for cross-border offers.[42] We are adopting both of the proposed exceptions, the exception for Tier I offers and the exception to permit ''connected exempt market makers'' and ''connected exempt principal traders,'' as defined by the U.K. City Code on Takeovers and Mergers (City Code),[43] to continue their U.K. market making activities during cross-border offers that are subject to the City Code.

Rule 14e–5 prohibits, in connection with a tender offer for equity securities, a covered person from purchasing or arranging to purchase any subject securities or any related securities except as part of the tender offer. The rule protects investors by preventing an offeror from extending greater or different consideration to some security holders by offering to purchase their shares outside the offer, while other security holders are limited to the offer's terms. The rule applies to: The offeror and its affiliates; the offeror's dealer-manager and its affiliates; any advisor to the offeror, dealer-manager or their affiliates, whose compensation is dependent on the completion of the offer; and any person acting, directly or indirectly, in concert with any of the other covered persons in connection with any purchase or arrangement to purchase any subject securities or any related securities.

Many foreign jurisdictions do not expressly prohibit an offeror from purchasing or arranging to purchase the subject security outside the terms of the offer. As noted in the proposing release, a strict application of Rule 14e–5 in some cases could disadvantage U.S. security holders where the offeror decides not to extend the offer in the United States because of the rule's restrictions. In that circumstance,

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[36] The text of new Rule 14d–11 is contained in the Regulation M–A Release, *supra note* 6.

[37] Revised Rule 14d–1(d)(2)(v).

[38] Revised Rules 13e–4(i)(2)(i), 13e–4(i)(2)(ii), 14d–1(d)(2)(i), and 14d–1(d)(2)(ii). A bidder may make one offer to U.S. holders and another only to non-U.S. holders if the offer to U.S. holders is made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offers. A bidder may also offer loan notes solely to non-U.S. holders.

The exception to the equal treatment condition of the Tier I exemption for cash only consideration adopted today would not apply to Tier II offers. The staff will continue to consider requests for that type of relief on a case-by-case basis. *See Amendments to Tender Offer Rules: All-Holders and Best-Price*, Exchange Act Release No. 23421 (July 7, 1986), [51 FR 25973] at Section III.B.3. Likewise, vendor placement arrangements will be considered on a case-by-case basis.

[39] Revised Rules 13e–4(i)(2)(iii) and 14d–1(d)(2)(iii) (Notice of extensions may be made in accordance with the requirements of the home jurisdiction law or practice).

[40] Revised Rules 13e–4(i)(2)(iv) and 14d–1(d)(2)(iv) (Payment made in accordance with the requirements of the home jurisdiction law or practice will satisfy the prompt payment requirements of Rule 14e–1(c)).

[41] The offeror would need to submit a written application requesting relief, along with a discussion of the basis for the request. If the request relates to an issuer tender offer, the request should be directed to the Office of Risk Management and Control in the Commission's Division of Market Regulation and the Office of Mergers and Acquisitions in the Commission's Division of Corporation Finance. If the request relates to a third party tender offer, the request should be directed to the Office of Mergers and Acquisitions.

The application must comply with the requirements of Rule 0–12 under the Exchange Act. When U.S. ownership is greater than 40 percent, the staff will consider relief on a case-by-case basis only when there is a direct conflict between the U.S. laws and practice and those of the home jurisdiction. Any relief would be limited to what is necessary to accommodate conflicts between the regulatory schemes and practices.

[42] After a comprehensive review of Rule 10b–13, including its application in the context of offers for U.S. issuers, we revised Rule 10b–13 and redesignated it as new Rule 14e–5. The text of the new rule is found in the Regulation M–A Release, *supra* note 6.

[43] The City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisition of Shares (Fifth Edition, Dec. 12, 1996). The City Code states general principles for the regulation of takeovers conducted in the United Kingdom and the Republic of Ireland.

flexible application of Rule 14e–5 is necessary and appropriate to encourage offerors for the securities of foreign private issuers to extend their offers to U.S. security holders. We believe the two exceptions we are adopting strike the proper balance between the investor protection goals of Rule 14e–5 and the interests of U.S. investors in being included in tender offers.

a. Tier I Offers

We are adopting, substantially as proposed, an exception for purchases or arrangements to purchase made outside, but during the time of, a Tier I tender offer. For tender offers that are substantially foreign in character, such as Tier I offers, we suggested in the proposing release that allowing U.S. security holders to participate in these offers outweighs the benefits derived from applying Rule 14e–5 to such offers. Commenters agreed with this evaluation.

This exception is based primarily on a number of exemptions from Rule 10b–13 to accommodate cross-border tender offers. This limited exception for Tier I tender offers largely represents a codification of the conditions contained in the exemptions previously granted by the Commission. The exception, however, being limited to Tier I offers, only extends to offers where U.S. persons hold of record 10 percent or less of the class of securities sought in the offer.

The exception requires that: The tender offer is an excepted Tier I offer; [44] the offering documents furnished to U.S. holders prominently disclose the possibility of any purchases, or arrangements to purchase, or the intent to make such purchases; the offering documents disclose the manner in which any information about any such purchases or arrangements to purchase will be disclosed; the offeror discloses information in the United States about any such purchases or arrangements to purchase in a manner comparable to the disclosure made in the home jurisdiction, as defined in § 240.13e–4(i)(3); and the purchases comply with the applicable tender offer laws and regulations of the home jurisdiction. Although not proposed, we are including a requirement that the offering documents disclose the manner in which any information about any such purchases or arrangements to purchase will be disclosed. This additional requirement ensures that security holders will know how to obtain the information that this exception requires to be disclosed.

Consistent with the proposed rule, we are not limiting the exception to purchases that are made outside the United States. Under the new exception for Tier I offers, offerors may purchase subject securities, subject to the conditions noted above, in transactions in the United States that otherwise would be prohibited under Rule 14e–5.[45] Under the requirement that the offeror disclose information in the United States about any such purchases or arrangements to purchase in a manner comparable to the disclosure made in the home jurisdiction, we expect that such disclosure will be provided in English.

We did not propose, and we are not adopting, an exception to Rule 14e–5 for Tier II offers because of the greater U.S. interest in those offers. Despite comments to the contrary, we believe that we should continue to review requests for relief from Rule 14e–5 for offers other than Tier I eligible offers on a case-by-case basis. In that context, we will consider factors such as proportional ownership of U.S. security holders of the subject security in relation to the total number of shares outstanding and to the public float; whether the offer will be for ''any-and-all'' shares or will involve prorationing; whether the offered consideration will be cash or securities; whether the offer will be subject to a foreign jurisdiction's laws, rules, or principles governing the conduct of tender offers that provide protections comparable to Rule 14e–5; and whether the principal trading market for the subject security is outside the United States.[46]

In our view, this exception will simplify the procedural requirements for foreign tender offers and further promote the extension of such offers to U.S. security holders, without compromising the investor protections of the rule.

b. Market Making by ''Connected Exempt Market Makers'' and ''Connected Exempt Principal Traders''

We are adopting the exception for ''connected exempt market makers'' and ''connected exempt principal traders'' [47] as proposed. Based upon our experience with U.K. regulatory requirements for tender offers, we recognize that there is sufficient regulatory oversight of purchases by connected exempt market makers and connected exempt principal traders in the United Kingdom to permit them an exception. Commenters supported this exception.

The exception permits purchases or arrangements to purchase if: The purchase or arrangement to purchase is effected by a connected exempt market maker or a connected exempt principal trader, as those terms are used in the City Code; the issuer of the subject security is a foreign private issuer; the tender offer is subject to the City Code; the connected exempt market maker or the connected exempt principal trader complies with the applicable provisions of the City Code; and the tender offer documents disclose the identity of the connected exempt market maker or the connected exempt principal trader and disclose, or describe how U.S. security holders can obtain information regarding market making or principal purchases by such market maker or principal trader to the extent that this information is required to be made public in the United Kingdom.[48]

As was proposed, this exception is not limited to Tier I tender offers. The exception applies to offerors or anyone acting on behalf of offerors (such as advisors and other nominees or brokers).

2. Regulation M

We are not changing Regulation M in this release. We did not propose any changes to Regulation M for cross-border exchange offers, whether qualifying for the registration exemption under Rule 802 or the Tier I or Tier II exceptions from the U.S. tender offer

[44] Excepted by either revised Rule 13e–4(h)(8) or revised Rule 14d–1(c).

[45] Of course, broker-dealers that solicit tenders from U.S. persons would be required to register as broker-dealers under Section 15 of the Exchange Act (15 U.S.C. 78o), absent an available exemption.

[46] As noted in the proposing release, this approach would comport with the Commission's action in a recent cross-border offer involving a U.K. target company with substantial U.S. ownership. *See* proposing release, *supra* note 8, at n. 92 and accompanying text.

[47] Under the City Code, connected exempt market makers and connected exempt principal traders are market makers or principal traders that are affiliated with the bidder's advisors (Eligible Traders).

[48] This exception is based on a limited class exemption under Rule 10b–13 to permit ''connected exempt market makers'' and ''connected exempt principal traders'' to continue their U.K. market making activities during a cross-border offer that is subject to the City Code. *See Exemption under Rule 10b–13 for Certain Principal Trading and Market Making Activities* dated June 29, 1998 (Eligible Trader Class Exemption). Without Rule 10b–13 relief, Eligible Traders would have been forced to withdraw from trading in U.K. target securities, with possible adverse consequences for the liquidity of those securities. This limited class exemption recognized the information barrier and other requirements contained in the City Code that Eligible Traders must satisfy to be exempt from the City Code's ''acting in concert'' provisions. This exemption required the Eligible Trader to comply with specified disclosure and recordkeeping requirements, and the Eligible Trader is prohibited from making purchases in the United States, which are consistent with conditions contained in other Rule 10b–13 exemptions granted in the cross-border context.

provisions, or for cross-border rights offerings qualifying for the registration exception under proposed Rule 801. In the proposing release, we asked whether exemptions from various rules under Regulation M are necessary to accommodate cross-border rights offerings or exchange offers conducted pursuant to Rules 801 or 802. Several commenters thought that an exception from Regulation M is appropriate in such instances.

We still are uncertain whether such changes are necessary despite the comments because there continues to be a lack of requests for relief in these contexts. We still believe we should evaluate the need for exemptions from Regulation M after we gain experience with the Regulation's operation in the context of those offerings. We will, however, carefully consider commenters' suggestions for an exception from Regulation M, and determine if we should propose such an exception.

D. Exemption From the Securities Act for Exchange Offers, Business Combinations, and Rights Offerings

1. Summary

The rules adopted today also provide exemptions from Securities Act registration requirements for securities issued to U.S. security holders of a foreign private issuer in exchange offers, business combinations, and rights offerings. These exemptions are being adopted as Rule 801 for rights offerings and Rule 802 for business combinations and exchange offers. Rule 800 provides common definitions for both rules. The exemptions are available only if the subject company (or the issuer in an issuer tender offer or rights offering) is a foreign private issuer and U.S. security holders hold no more than 10 percent of the subject securities.[49]

The exemptions are not available for any transaction or series of transactions that technically complies with the exemptions but is part of a plan or scheme to evade the registration provisions of the Securities Act.[50] For example, if the exchange offer or rights offering is a sham conducted solely as a pretext for distributing securities in the United States, the exemptions would not be available.[51]

2. Eligibility Conditions

a. U.S. Ownership Limitation

As adopted, exchange offers, business combinations, and rights offerings will be exempt from registration under the Securities Act if U.S. security holders own 10 percent or less of the foreign private issuer's securities that are the subject of the offer. Based on the suggestions of commenters, we have increased the U.S. ownership limit from five to 10 percent. When U.S. security holders own 10 percent or less of the issuer, U.S. participation is generally not necessary for the success of the offering. Therefore, it is quite common for offerors to exclude U.S. security holders below this level.[52] Commenters unanimously indicated that an increase was necessary to facilitate including U.S. persons in these transactions. Commenters' suggestions ranged from 10 to 30 percent.

We do not believe it is necessary to increase the level above 10 percent for exchange offers. It is common for offerors to include U.S. security holders above that level, since they are usually necessary for the success of the offer.[53] Because a rights offering may be used as a financing device, we considered keeping the threshold for rights offerings at five percent. However, exclusion of U.S. holders in rights offerings is common even with much higher U.S. ownership levels.[54] U.S. participation is rarely viewed as necessary for the success of the offer, since from an issuer's viewpoint, the fewer shares sold to existing security holders at a discount, the better. For that reason, the goal of facilitating U.S. participation in foreign rights offerings would be significantly undermined by the proposed lower U.S. ownership ceiling of five percent. This is particularly true in light of our decision to modify the method for calculation of U.S. holdings to make the test reflect U.S. beneficial, rather than merely record, ownership. However, we do not believe that the ownership threshold should be increased above 10 percent for rights offerings because it is our view that the benefits obtained by providing U.S. security holders with the protections of the Securities Act at ownership levels above 10 percent outweigh the benefits that would be obtained by raising the ownership threshold in order to provide incentives for foreign private issuers to include U.S. security holders above the 10 percent level.

Some commenters suggested that we adopt an exemption from both the Securities Act and tender offer provisions if the subject company has less than 300 U.S. holders, regardless of the percentage of the foreign private issuer's securities owned by those investors. We do not believe that it is necessary or appropriate to exempt an offering of securities to up to 300 U.S. investors from the Securities Act registration requirements, in what may be a predominantly U.S. transaction, based solely on the foreign status of the subject company. U.S. investors in cross-border exchange offers should be provided with the protections of Securities Act registration, unless application of those provisions likely would result in the exclusion of U.S. holders from the transaction. Where U.S. participation is not incidental to the transaction, those requirements should continue to apply. With respect to the tender offer provisions, offers involving less than 300 U.S. holders are likely to be subject only to Regulation 14E, not the filing and procedural requirements of Regulation 14D, and thus will not need exemptive relief beyond that adopted today.

As with the tender offer exemptions, in order to provide a level playing field in the case of competing offers, the rules adopted today provide that if a bidder commences a tender offer or a business combination during an ongoing tender offer or business combination made

[49] As we stated in the proposing release, the exemptions adopted today under new Rules 801 and 802 are non-exclusive. An issuer making an offering in reliance on either of the rules may claim any other available exemption under the Securities Act. Securities issued under new Rules 801 or 802 would not be integrated with any other exempt offerings by the issuer. General Notes 5–7 to new Rules 800, 801, and 802.

[50] *See* General Note 2 to new Rules 800, 801, and 802.

[51] Therefore, a foreign company could not, for example, conduct a rights offering under Rule 801 that is targeted at the U.S. holders. If the offeror does not have a bona fide expectation that non-U.S. holders would participate in the offering to a similar extent as U.S. holders, the pro rata nature of the offering would be a sham. Another example would be when an initial offer is commenced solely as a pretext for making a subsequent offer automatically eligible for the exemptions.

[52] *See* note 8, *supra.*

[53] Although comprehensive statistics on transactions that exclude U.S. investors is not available, a significant number of transactions with greater than 10 percent U.S. ownership are extended to U.S. holders. For example, U.S. holders owned more than ten percent of the subject class of securities in 31 of the 54 requests for exemptive relief received by the Commission between 1990 and 1998.

[54] Between 1994 and 1998, 78 rights offerings were made to U.S. shareholders holding American or Global depositary receipts held by the Bank of New York. In 30 of the rights offerings (39%), U.S. shareholders were excluded entirely. In the remaining 48 offerings (61%), the Bank of New York sold the rights and provided shareholders with the cash, after costs. A significant number of these offerings had U.S. holders who held more than five percent of the securities at issue. *See* the letter from Emmet, Marvin & Martin, LLP dated February 17, 1999, *supra* note 15. Costs borne by U.S. shareholders in these cases include transaction fees, ADR cash distribution or issuance fees, and potential liquidity costs if the foreign market is small.

pursuant to Rule 802 for securities of the same class subject to its offer, the second bidder will be eligible to use Rule 802 so long as all the conditions of the exemption, other than the limitation on U.S. ownership, are satisfied. Thus if the initial bidder relies on the Rule 802 exemption to make a tender offer, a subsequent competing bidder would not be subject to the 10 percent ownership limitation condition of the Rule 802 exemption. We do not believe it appropriate to provide, however, that if the initial bidder relied on the Tier I exemption but did not also rely on the Rule 802 exemption, a subsequent competing bidder may use the Rule 802 exemption without regard to the ownership limitation condition. As a policy matter, when relief is not necessary to ensure that competing offers are subject to the same regulatory requirements, we believe it is more important to limit relief from the Securities Act registration requirements to situations where it can be verified that U.S. security holders own 10 percent or less of the subject class of securities.[55]

b. Equal Treatment

The terms and conditions of the offer must be at least as favorable for U.S. security holders as foreign holders. Rules 801 and 802 provide exceptions to the equal treatment requirement similar to the Tier I exemption with respect to state blue-sky requirements.

c. Transfer Restrictions

The new exemptions restrict the transferability of the securities acquired in an exempt transaction. To the extent that the subject securities are ''restricted securities'' under Rule 144 in the hands of a U.S. investor prior to the Rule 801 or 802 transaction, securities acquired by that investor in the Rule 801 or 802 transaction will be ''restricted securities.'' [56] Conversely, if the securities that are the subject of the transaction made pursuant to Rule 801 or 802 are unrestricted, then securities acquired in the transaction will be unrestricted. In the latter case, the securities would be freely tradable by non-affiliate security holders, so long as they are not participating in the offer under circumstances in which they could be deemed statutory underwriters.[57]

In the case of a rights offering under Rule 801, the proportion of restricted to unrestricted securities will be determined as of the record date that determines the allocation of rights among security holders. In the case of an exchange offer or business combination, the proportion will be based upon the securities tendered or exchanged by the holders.

We proposed this approach for transfer restrictions only with respect to Rule 802 for exchange offers. In contrast, the Rule 801 exemption for rights offerings proposed in 1998 would have required that all securities purchased upon the exercise of the rights be restricted within the meaning of Rule 144. We are persuaded by the large number of commenters who argued that it was not necessary to require unaffiliated U.S. security holders to accept restricted securities in rights offerings where they currently hold unrestricted securities. However, we think it is appropriate to require that security holders receive restricted securities in the transaction if they held restricted securities before the transaction. Otherwise, a rights offering or exchange offer could be used as a pretext for creating a large pool of freely tradable securities in the hands of investors who previously held only restricted securities. This restriction, along with the requirement that the offer be made to all holders on a pro rata basis, and that U.S. ownership in the subject company's securities be limited to 10 percent, should minimize the potential that Rules 801 and 802 will be misused as a means to conduct illegal distributions in the United States. Moreover, securities issued in a rights offering or exchange offer to affiliates of the issuer would not be freely tradable.[58]

d. Additional Requirements for Rights Offerings

Rule 801, as adopted today, is available only for rights offerings of equity securities made on a pro rata basis to existing security holders of the same class, including holders of ADRs evidencing those securities. Under Rule 800, the term ''equity security'' does not include convertible securities, warrants, rights, or options.[59] Rule 801 is limited to the offer of securities of the same class of securities as those held by the offerees, because the offerees already have made the decision to invest in that class.

Rule 801 requires that the rights granted to U.S. security holders not be transferable except offshore in accordance with Regulation S.[60] Certain commenters believed that restricting the transferability of the rights would put U.S. security holders at a disadvantage to non-U.S. security holders who could transfer the rights. However, we believe this restriction is appropriate to assure that foreign private issuers do not extend the offerings to new investors in the United States and that a market not develop in the United States for the rights without adequate disclosure regarding the issuer.

e. Offeror Eligibility Requirements

As adopted, Rule 801 requires that the offeror be a foreign private issuer. It does not impose any other offeror eligibility requirements. Where U.S. participation is only incidental to the offering, no other offeror eligibility criteria are necessary. Investors are already familiar with the issuer and the security. The commenters concurred that imposition of additional criteria would only diminish the effectiveness of the exemption by narrowing its scope and causing U.S. security holders to continue to be excluded.

As adopted, Rule 802 does not contain any limitations based on the domicile or reporting status of the offeror. Any offeror can use Rule 802 regardless of whether it is a U.S. company or a foreign private issuer and regardless of whether it is a reporting company. The subject company, however, must be a foreign private issuer. Requiring a U.S. bidder for the securities of a foreign subject company to register the U.S. portion of an exchange offer would place the U.S. bidder, particularly a non-reporting U.S. company, at a competitive disadvantage to a foreign bidder for the same company. In the case of a business combination where there is no surviving

[55] In this situation, the subsequent bidder commencing an exchange offer or business combination will be entitled to calculate the percentage of U.S. ownership 30 days before commencement of its offer. *See* Section II.F.1. *infra.* Assuming that the subsequent offer is commenced within 30 days of the announcement of the initial Tier I offer, the subsequent bidder would not be disadvantaged by any movement of securities into the United States following that announcement when calculating the percentage of U.S. ownership of the subject securities for purposes of eligibility under new Rule 802.

[56] *See* General Note 8 to new Rules 800–802. Under Securities Act Rule 144(d), the holding period for the restricted securities issued in the Rule 801 or 802 transaction will depend on the nature of the transaction. Investors in issuer exchange offers not involving an additional cash investment will be able to ''tack'' the holding period for the tendered restricted security to the holding period for the new security, and thus would calculate the holding period from the time it originally acquired the tendered security from the issuer or an affiliate. The holding periods for restricted securities received in a rights offering or third-party exchange offer, however, would begin with the issuance of those securities in the Rule 801 or 802 transaction.

[57] *See* Section 2(a)(11) of the Securities Act, 15 U.S.C. 77b(11).

[58] Under Rule 144(e)(1) (17 CFR 230.144(e)(1)), affiliates of the issuer are subject to volume restrictions on the resale of their securities.

[59] New Rule 800(b).

[60] 17 CFR 230.901 through 230.905.

acquiror and the issuer is the successor company to all participating companies, all participants in the business combination must be foreign private issuers.

Finally, neither Rule 801 nor 802 impose a dollar limitation on the value of securities that may be sold to U.S. investors in an exempt transaction. The American Bar Association commented that a dollar limitation appears to be too arbitrary given the different sizes of companies and the fluctuating market value of securities being offered.[61] We agree.

f. Informational Requirements

Rules 801 and 802 do not mandate that specific information be sent to U.S. security holders. Instead, when any document, notice or other information is provided to offerees, copies (translated into English) must be provided to U.S. security holders in a similar manner. The documents must include a legend regarding the foreign nature of the transaction and the issuer's disclosure practices. The legend also must state that investors may have difficulty in enforcing rights against the issuer and its officers and directors. Some commenters noted that imposing a requirement for a legend on the cover page was unnecessarily burdensome and could discourage offerors from extending offers to U.S. security holders.[62] To address these concerns, the legend need not be placed on the cover page; rather, it need only be placed in a prominent position in the document.

Rules 801 and 802 both require that the offeror provide the notice or offering document to U.S. security holders in English at the same time it provides the information to offshore offerees. We proposed that offerors be required to deliver rights offering materials to U.S. investors, even if those materials were only published overseas. In contrast, exchange offer materials would not be required to be delivered if not delivered in the home jurisdiction. We are persuaded by those commenters who indicated that offerors will not be inclined to avail themselves of Rules 801 or 802 if burdensome documentation and dissemination requirements are imposed by the U.S. rules and who were of the view that U.S. security holders should be provided with information on the same basis as that provided to offerees in other jurisdictions. As noted above, exclusion of U.S. holders in rights offerings is common even at high U.S. ownership levels. U.S. participation is rarely viewed as necessary for the success of the offer, and U.S. investors may thereby be deprived of the opportunity to acquire shares at attractive prices, resulting in their positions being diluted. Requiring the offeror to mail rights offering materials to U.S. security holders might create an additional incentive for offerors to exclude U.S. security holders from participating in the rights offering. In order to encourage foreign private issuers to include U.S. security holders in rights offerings, the rules adopted today provide that for both rights offerings and exchange offers, the offeror must disseminate any informational documents to U.S. holders, in English, on at least a comparable basis to that provided to security holders in the offeror's home jurisdiction. If the offeror disseminates by publication in its home jurisdiction, the offeror must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer. Of course, the offeror may mail to U.S. security holders in any event.

We are adopting, as proposed, the requirement that an offeror submit a notification to the Commission on new Form CB. A foreign company also must file a Form F–X at the same time it submits the Form CB to appoint an agent for service of process in the United States. The new form will include as an attachment a copy of any document, notice or other information disseminated to U.S. offerees.

g. Trust Indenture Act Exemption

We are adopting, as proposed, a new rule under section 304(d) of the Trust Indenture Act that would exempt any debt security issued pursuant to Rule 802 under the Securities Act from having to comply with the provisions of the Trust Indenture Act. Therefore, the rules adopted today will permit offerors to offer debt securities in an exchange offer or business combination without complying with the provisions of the Trust Indenture Act. As one commenter noted, a failure to provide relief under the Trust Indenture Act would essentially undermine the usefulness of the other relief in the case of debt securities.[63] Accordingly, we believe that the benefits to be obtained by U.S. investors by providing exemptions under the Trust Indenture Act when debt securities are issued pursuant to a Rule 802 exemption justify not providing U.S. investors with the protections of the Trust Indenture Act in these types of transactions.

E. Investment Companies

As proposed, Rules 801 and 802 would not have been available for securities issued by an investment company, whether foreign or domestic, that is registered or required to be registered under the Investment Company Act. The proposal excluded foreign investment companies from these exemptions because the Investment Company Act generally prohibits foreign investment companies from publicly offering their securities in the United States or to U.S. persons.[64] Domestic investment companies were excluded because, unlike other issuers, investment companies that are registered or required to be registered under the Investment Company Act generally must register the securities that they offer or sell outside the United States.[65] The proposing release noted, however, that a closed-end investment company that is registered under the Investment Company Act, like other non-investment company issuers, may be able to rely on the safe harbor provided by Regulation S under the Securities Act to issue securities abroad without registering those securities under the Securities Act.[66] We requested comment whether Rule 802 should be available to registered closed-end investment companies.

In response to commenters' suggestions, both Rules 801 and 802, as adopted, are available for securities issued by closed-end investment companies that are registered under the Investment Company Act. We believe that this result is consistent with the Commission's previous decision to permit closed-end investment companies to rely on the Regulation S safe harbor to issue unregistered securities abroad.[67] These rules, however, are not available to any other type of investment company, whether foreign or domestic, that is registered or required to be registered under the Investment Company Act.[68]

[61] *Supra* note 30.

[62] *See* letter from Sullivan & Cromwell dated February 12, 1999, *supra* note 15 and the letter from the American Bar Association dated March 2, 1999, *supra* note 30.

[63] *Id.*

[64] *See* proposing release, *supra* note 8, at note 126 and accompanying text.

[65] *See id.* at note 127 and accompanying text.

[66] *See id.* at note 127.

[67] *See* Offshore Offers and Sales, Securities Act Release No. 6863 (April 24, 1990) (55 FR 18306), at notes 151–53 and accompanying text.

[68] As explained in the proposing release, both foreign and domestic issuers that are excepted from the definition of ''investment company'' under the Investment Company Act would be permitted to use these exemptions, so long as reliance on the exemptions is consistent with their unregistered status under the Investment Company Act. *See*

Continued

As proposed, the Tier I and Tier II tender offer exemptions also would not have been available if the subject company was an investment company registered or required to be registered under the Investment Company Act. As adopted these exemptions are available if the subject company is a closed-end investment company registered under the Investment Company Act.[69] Consistent with the Commission's application of Regulation S and the exemptions in Rules 801 and 802, the Tier I and Tier II tender offer exemptions as adopted are available if the subject company is a closed-end investment company registered under the Investment Company Act.

F. Determination of U.S. Ownership

1. Definition of U.S. Holder

Today's amendments revise the method for determining the amount of securities held by U.S. holders from that included in the 1998 proposals. The amount owned by U.S. holders is important under both the Tier I and II tender offer exemptions. It is also important in determining the availability of the Securities Act exemptions under Rules 801 and 802. Relief in each case is conditioned, at least in part, on the percentage of the subject company's securities held by U.S. security holders not exceeding a specified threshold.

The proposed approach was based on the definition of ''foreign private issuer,'' [70] which at the time was based solely on record, not beneficial ownership. We recently amended that definition to require companies claiming foreign private issuer status to look through certain bank, broker-dealer and other nominees to determine the residence of the nominee's client accounts.[71] We likewise are adopting that modified approach for the purpose of determining the amount of securities held by U.S. holders under the new exemptive rules. Like the revised foreign private issuer definition, the starting point is Rule 12g3–2(a) under the Exchange Act.[72] Rule 12g3–2(a) follows the definition of ''securities held of record'' in Rule 12g5–1, but requires the offeror to ''look through'' the record ownership of brokers, dealers, banks or nominees appearing on the issuers' books or those of transfer agents, depositaries, or others acting on the issuer's behalf. If those record owners hold securities for the accounts of customers, the issuer must determine the residency of those customers. This method of calculation more closely reflects the beneficial ownership of the issuer's securities.

We have limited the application of the ''look through'' provisions of Rule 12g3–2(a) to securities held of record (1) in the United States, (2) in the issuer's home jurisdiction, and (3) in the primary trading market for the issuer's securities if different from the issuer's home jurisdiction. These jurisdictions should cover most of the trading volume for the issuer's securities, and searches in these jurisdictions are likely to yield the greatest number of U.S. beneficial owners. This modification to the Rule 12g3–2(a) approach should reduce the burden on foreign companies while still producing a reasonably accurate picture of the size of the U.S. ownership of the foreign issuer.[73]

Some commenters pointed out that it is not always possible for issuers to obtain information about separate customer accounts, as required by Rule 12g3–2(a). Brokers, dealers, banks or other nominees may be unwilling or unable to provide information about their customer accounts. We note, however, that the duty to inquire about separate customer accounts already exists for issuers deciding whether the reporting exemption in Rule 12g3–2(a) is available. In addition, the offeror would not be asking nominees to provide the number of U.S. security holders or the names of those security holders, but only the aggregate amount of the nominee's holdings that are represented by U.S. accounts. Thus, the offeror would not have to ask the nominees for information regarding possible 10 percent holders. If after reasonable inquiry, however, the offeror is unable to obtain information about the nominee's customer accounts, including cases where the nominee's charge for supplying this information would be unreasonable, the offeror may rely on a presumption that the customer accounts are held in the nominee's principal place of business.[74]

Also similar to the revised approach under the foreign private issuer definition, issuers and offerors must take into account information regarding U.S. ownership derived from beneficial ownership reports that are provided to the issuer or filed publicly in the United States or in the home jurisdiction, as well as beneficial ownership information that otherwise is provided to the issuer or offeror.

We recognize that by focusing on beneficial ownership rather than record ownership, we have made it more difficult to stay below the relevant ownership ceilings and thus have limited the applicability of the exemptive rules. Indeed, that is one reason why we increased the U.S. ownership threshold under Rules 801 and 802 to 10 percent. Nevertheless, we believe that it is critical that the exemptive rules function based upon a fair assessment of the U.S. participation in the offering. Reliance on record ownership would result in applicability of the exemption when actual U.S. investor interest, and therefore their importance to the success of the transaction, far exceeds the stated ceilings.

We are not adopting as part of the final rules a proposed rebuttable presumption (also proposed for the purposes of the foreign private issuer definition) that if a foreign private issuer's securities trade in the U.S. markets in the form of ADRs, the securities deposited in the ADR program are held solely by U.S. residents. Commenters on the foreign private issuer proposal pointed out that, for a number of reasons, non-U.S. security holders may choose to hold securities in ADR form. It appears that issuers will not rely on the presumption and will feel the need to query ADR depositaries regarding the owners of ADRs. Therefore, we have eliminated the presumption from these rule revisions as well.[75] Issuers will thus have to

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proposing release, *supra* note 8, at notes 128–29 and accompanying text.

[69] *See supra* note 67 and accompanying text. One commenter suggested generally that these exemptions be made available whenever the subject company is a foreign investment company. Because we have not received any requests for relief in connection with a tender offer for a foreign investment company, we have not expanded the Tier I or Tier II exemptions to cover subject companies that are foreign open-end investment companies.

[70] Exchange Act Rule 3b–4 (17 CFR 240.3b–4).

[71] International Disclosure Standards, Exchange Act Release No. 41936 (September 28, 1999), 64 FR 53900.

[72] 17 CFR 240.12g3–2(a).

[73] For example, a German foreign private issuer traded solely on the Frankfurt Stock Exchange would have to query banks and broker-dealers that are either registered owners with the company or appear on participant lists of depositaries and that are based in Germany or the United States. The issuer would request information on the number of shares held by customer accounts that reflect a U.S. address for the customer.

[74] Because it will be difficult for third-party offerors in an unsolicited or ''hostile'' tender offer to ascertain whether the exemption is available without information on the subject company's U.S. ownership, we are adopting the proposed presumption that the U.S. ownership percentage limitations are not exceeded based on the relative level of trading volume in the United States. *See* Section II.F.3. *infra.*

[75] The revisions from the proposal do not affect the treatment of bearer securities in determining U.S. ownership. Since neither a U.S. residence nor the name of an offshore nominee will appear on the records of the issuer for the holder of the bearer

examine the participant lists of ADR depositaries and query home country or U.S. broker-dealer or bank nominees appearing on those lists to ascertain the amount of ADRs held by U.S. investors.

We have revised the time period for calculating the percentage of U.S. ownership from the proposal. As proposed, the calculation would have been made at the commencement of the offer. Based on commenters' suggestions, we revised the proposal to include a 30 day ''look back'' period to accommodate the offeror's or issuer's planning process. As revised, the offeror would make the calculation of U.S. ownership 30 days before the commencement of the tender offer. Or, in the case of a business combination such as a merger where the securities are issued by the acquiring company, the calculation will be based on U.S. ownership of the company to be acquired 30 days before the commencement of the solicitation for the merger. In business combinations such as an amalgamation, where the securities are issued by a successor company to all participating companies, the calculation would be made based on U.S. holder information available 30 days before commencement, but applied on a pro forma basis as if measured immediately after completion of the business combination.

We are not adopting the proposal that if a bidder commences an offer during an ongoing tender or exchange offer for securities of the same class subject to its offer, the bidder could calculate the percentage of subject securities held by U.S. holders as of the same date used by the initial bidder. We believe that this proposal is unnecessary because the rules adopted today provide that if a bidder commences a tender offer or a business combination during an ongoing tender offer or business combination for securities of the same class subject to its offer, the second bidder will be eligible to use the same exemption as the prior bidder (Tier I, Tier II, or Rule 802) so long as all the conditions of the exemption, other than the limitation on U.S. ownership, are satisfied by the second bidder. In addition, if the bidder chooses to rely on a different exemption from the initial bidder, the bidder will be entitled to calculate the percentage of U.S. ownership 30 days before commencement of its tender offer or commencement of the solicitation for the merger. Accordingly, the subsequent bidder should not be disadvantaged by any movement of securities into the United States following the announcement of the initial bid.[76]

The issuer must include securities underlying ADRs in determining the amount of securities outstanding of the class that is the subject of the offer, as well as the amount of the subject class of securities held by U.S. holders. On the other hand, other types of securities that are convertible into or exchangeable for subject securities, such as warrants, options, and convertible securities, would not be taken into account in calculating U.S. ownership.

2. Exclusion of Holdings of More Than 10 Percent

We proposed that offerors exclude securities held by non-U.S. security holders of more that 10 percent of the class from the calculation of the U.S. ownership percentage. We requested comment regarding whether it would be appropriate to exclude securities held by affiliates, whether held outside the United States or in the United States, from both elements of the calculation, thus focusing only on the percent of the company's total world-wide non-affiliated float held in the United States. Many commenters objected to excluding only non-U.S. 10 percent holders. Commenters argued that since many foreign private issuers have one or more significant security holders—indeed, many are controlled by founding families—their exclusion from the calculation could severely limit the availability of the exemptions.

Several commenters suggested that a better approach would be to exclude large or institutional U.S. security holders, as well as foreign 10 percent holders. One commenter suggested excluding the securities of the bidder, regardless of the amount. Commenters argued that large U.S. security holders do not need the protections of the securities laws and could easily go overseas to participate in the transaction or participate on a private placement basis. Absent exemptive relief, bidders would extend the offer only to the larger, and exclude the smaller, U.S. security holders (assuming U.S. institutional investor participation would not trigger U.S. all-holders requirements).

For these reasons, we are persuaded by the commenters that large U.S. holders likewise should be excluded from the calculation of U.S. ownership. Similarly, exclusion of securities held by a bidder or bidding group will provide greater assurance of an accurate assessment of the significance to the offer of the participation by U.S. public investors.

Because the 10 percent holders are viewed as affiliates for purposes of calculating U.S. ownership, they presumably would be treated as affiliates for purposes of Rule 144[77] as well . They would therefore be subject to limitations on the amount of securities received in the offer that they could resell. Treating these securities as control shares should minimize the potential that, in cases where there are a significant number of shares held by a relatively few U.S. holders, the Securities Act exemptions for cross-border rights offerings and exchange offers under Rules 801 and 802 will be misused as a means to conduct illegal distributions in the United States.

3. Determination of Eligibility by Persons Other Than the Issuer

As we noted in the November 1998 release, the principal disadvantage of using a U.S. ownership threshold as a condition for the applicability of the exemptions is that it will be difficult for third-party offerors to ascertain whether the exemption is available without information on the subject company's U.S. ownership.[78] It will be even more difficult for persons other than the issuer to obtain information from nominees, including information on 10% holders, as required under the modified approach adopted today.[79] We are adopting, with minor changes, the proposal that a third-party bidder in an unsolicited or ''hostile''[80] tender offer may rely upon a presumption that the U.S. ownership percentage limitations

securities, these securities will not be treated as being held by U.S. residents, unless the offeror knows or has reason to know that these securities are held by U.S. residents.

[76] See note 55, *supra.*

[77] 17 CFR 230.144.

[78] Exemptions for transactions like issuer tender offers or rights offerings do not pose this problem. An issuer can and must examine its own records and those of transfer agents and depositaries acting on its behalf to obtain the necessary information regarding U.S. ownership of its own securities.

[79] This concern is eliminated if the hostile bidder commences its offer after a prior competing tender offer or a business combination for securities of the same class subject to its offer and chooses to rely on the same exemption as the prior offeror because, as previously noted, the second bidder will be eligible to use the same exemption (Tier I, Tier II, or Rule 802) as the prior offeror, provided that all the conditions of the exemption, other than the limitation on U.S. ownership, are satisfied by the second bidder. A presumption remains necessary, however, when the hostile bidder either makes the initial offer or is the subsequent bidder but chooses to rely on a different exemption from that used by a prior offeror.

[80] New Rule 802(c)(1) and Instruction 3.i. to revised Rules 14d–1(c) and (d) make the presumption inapplicable to offers ''made pursuant to an agreement'' with the issuer. The agreement need not be written.

of the Tier I,[81] Tier II[82] and Rule 802 exemptions are not exceeded unless:

(1) The aggregate trading volume of the subject class of securities on all national securities exchanges in the United States, on the Nasdaq market or on the OTC market, as reported to the NASD, over the 12-calendar-month period ending 30 days before commencement of the offer, exceeds 10 percent in the case of Tier I offers and Rule 802, and 40 percent in the case of Tier II offers, of the worldwide aggregate trading volume of that class of securities over the same period;

(2) The most recent annual report or other informational form filed or submitted by the issuer or security holders to securities regulators in its home jurisdiction or elsewhere (including with the Commission) indicates that U.S. holdings exceed the applicable threshold;[83] or

(3) The bidder knows or has reason to know from other sources that the level of U.S. ownership of the subject class exceeds the thresholds.

As to whether the foreign subject company is a foreign private issuer, the bidder can rely on the exemptions if the issuer of the subject securities files reports with the Commission under the foreign integrated disclosure system[84] or has claimed an exemption from reporting under Exchange Act Rule 12g3–2(b),[85] unless the bidder knows the foreign subject company is not a foreign private issuer.

One commenter believed that the presumption should be available for both hostile and negotiated transactions. The commenter was concerned that takeover situations are often fluid and that hostile offers often turn friendly shortly after commencement of the tender offer. We believe, however, that application of the exemption should turn on an accurate assessment of U.S. ownership whenever possible. A bidder in a negotiated transaction would be able to arrange to get this information from the subject company as part of the acquisition agreement. We believe that the presumption should be available only when there is no assurance that the issuer will obtain and provide the offeror with current information about U.S. ownership. If information on U.S. ownership can be obtained, that information should determine whether the exemptions are available, rather than a presumption based on trading activity. For this reason, notwithstanding the views of some commenters, an issuer, affiliate, or friendly bidder could not rely upon the presumption.

Even if the above presumption is not available, the bidder may nevertheless rely on the exemption if it can demonstrate that U.S. ownership is in fact less than the relevant threshold or, in the case of competing bids, if the bidder chooses to rely on the same exemption (Tier I, Tier II, or Rule 802) as that used by a prior offeror.[86]

G. Internet Disclosure

There is no limitation under the exemptive provisions adopted today on the use of the Internet to publish offering materials and other information about the cross-border transaction.[87] However, when materials are required to be disseminated directly to U.S. holders (for example, in a Tier II offer subject to Regulation 14D or when materials are mailed in the home country in a Tier I offer), Internet dissemination of the offering materials would not, without more, constitute adequate dissemination under the new exemptive rules.[88] If an offeror publishes in its home country, posting the materials on its web site would not constitute adequate publication in the United States. Electronic dissemination could satisfy a dissemination requirement only if conducted in a manner consistent with the guidance provided in our 1995 release on electronic dissemination, including the requirement to obtain the U.S. holder's consent to receive the mandated materials by electronic means or other evidence of delivery.[89]

In response to the request of several commenters, we are providing guidance on whether materials relating to offshore tender and exchange offers could be posted on the Internet without triggering U.S. tender offer and securities registration requirements with respect to that offer. We note that the exemptions adopted today are intended to facilitate the inclusion of U.S. investors in cross-border transactions, not to provide a means to avoid U.S. jurisdiction. However, U.S. investors would benefit from timely and reliable information about foreign corporate actions, even if they are not able to participate in the transactions.

1. General Approach

The posting of information on a web site may constitute an offer of securities for purposes of the U.S. securities laws. We recently published our views clarifying when the posting of materials on Internet web sites would not be considered an offer or soliciting activity in the United States for purposes of the registration requirements of the federal securities laws (the ''1998 Internet Release'').[90] In the 1998 Internet Release, we expressed the view that offering materials posted on a web site would not be viewed as an offer, general solicitation or directed selling efforts in the United States, so long as the offeror implements precautionary measures that are reasonably designed to ensure that the Internet offer is not targeted to persons in the United States or to U.S. persons. The 1998 Internet Release stated that when an offeror prominently discloses that the offer is being made to countries other than the United States and implements adequate measures

[81] *See* revised Rules 13e–4(h)(8) and Rule 14d–1(c).

[82] *See* revised Rules 13e–4(i) and 14d–1(d).

[83] If U.S. ownership of more than 10 percent is reported in public filings with the Commission or a foreign regulator, such as Schedule 13D or 13G, we would take the position that the bidder has reason to know the level of U.S. ownership exceeds 10 percent.

[84] This includes Form 20–F and 6–K, which are available only to foreign private issuers.

[85] 17 CFR 240.12g3–2(b).

[86] For example, if a hostile bidder makes a tender offer in reliance on the Tier I exemption, the hostile bidder may rely on the presumption. If the hostile bid is then followed by a subsequent bid, whether by the issuer, an affiliate, or a hostile or friendly third-party bidder, the subsequent bidder also may use the Tier I exemption so long as the subsequent bidder satisfies all of the conditions of the Tier I exemption other than the ownership limitation condition. If, however, the subsequent bidder wishes to rely upon new Rule 802 to make an exchange offer or business combination, the subsequent bidder will have to satisfy the ownership limitation condition of Rule 802 as well as its other conditions even though both Rule 802 and the Tier I exemption each use a 10% ownership threshold. In this situation, if the subsequent bidder is a hostile bidder, it may use the presumption discussed above if all of the conditions of the presumption are satisfied to commence a Rule 802 offer in response to the initial Tier I or Tier II offer. Even if the above presumption is not available, the bidder may nevertheless rely on the Rule 802 exemption if it can demonstrate that U.S. ownership is in fact less than the relevant threshold. The bidder will be entitled to calculate the percentage of U.S. ownership 30 days before commencement of its exchange offer or commencement of the solicitation for the merger.

Another example would be where a third-party bidder in a negotiated transaction desires to make an exchange offer or business combination in reliance on the Section 802 exemption. The third party bidder would not be entitled to rely on the presumption because it is not a hostile party. If, after calculating the percentage of the issuer's securities held by U.S. holders, the friendly party commences an exchange offer or business combination in reliance on the Section 802 exemption, then a subsequent offeror also may rely on the Section 802 exemption so long as all of the conditions of such exemption, other than the ownership limitation condition, are satisfied.

[87] The Internet materials would be filed or submitted with, or as an amendment to, the Schedule TO or the Form CB, when applicable.

[88] *See* Section II.D.2. of the Regulation M–A Release, *supra* note 6.

[89] *See* Electronic Dissemination, Securities Act Release No. 7233 (Oct. 6, 1995) (60 FR 53458).

[90] Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, Securities Act Release No. 7516 (March 23, 1998) (63 FR 14806).

reasonably designed to guard against sales to persons in the United States or to U.S. persons in an offshore Internet offer, we will not view the offer as targeted to persons in the United States or to U.S. persons and thus will not treat it as occurring in the United States for Securities Act registration purposes.

Offshore rights offerings fall squarely within the guidance set forth in that release. As a general matter, an offeror conducting a tender or exchange offer also may rely on the guidance in the 1998 Internet release. This discussion provides additional guidance as to what constitutes adequate precautions to prevent participation by persons in the United States or U.S. persons in the context of these types of offshore transactions. What constitutes adequate measures depends on all the facts and circumstances of any particular situation. These procedures are not exclusive; other procedures that suffice to guard against sales to persons in the United States or to U.S. persons also can be used to demonstrate that the offer is not targeted at the United States.

2. Offshore Tender and Exchange Offers, Rights Offerings and Business Combinations on the Internet

Posting materials relating to tender and exchange offers and rights offerings on the web site of the offeror or subject company, or a third party, presents special problems not present in the context of public underwritten offerings. U.S. holders of the subject securities already are familiar with the subject company and its securities and are more likely to be alerted immediately to the posting of offering materials. Investors may either monitor the target's web site or employ a search service to alert it to any materials posted on the Internet relating to that company. Also, because of their existing investment in those securities, U.S. investors are more likely to have an incentive to find indirect means to participate in the offer, even though the materials state that the offer is not being made in the United States. As a result, offerors using a web site to publicize their offer should take special care that it is not used as a means to induce indirect participation by U.S. holders of those securities.

One way in which the offeror could take special care to prevent sales to U.S. holders would be, in responding to inquiries and processing letters of transmittal, to obtain adequate information to determine whether the holder is a person in the United States or a U.S. person. Another example of such special care would be if the offeror obtains representations by the investor, or anyone tendering on the investor's behalf, that the investor is not a person in the United States or a U.S. person. Similarly, in disseminating the cash or securities consideration to tendering investors, special care should be taken to avoid mailing into the United States.

Despite the use of disclaimers and the implementation of precautionary measures against accepting tenders or the exercise of rights from the United States, a web site posting could be viewed as an offer in the United States if the content of the web page clearly is designed to induce U.S. investors to find an indirect means to participate in the offer through offshore nominees or other means. Offerors cannot accomplish indirectly what they purport not to be doing directly.

In many cases, even though the offer materials disseminated outside the United States state that the offer is not being made in the United States, the bidder will allow U.S. institutional investors to participate either under Regulation S for offers and sales taking place outside the United States, or as a private or limited placement under section 4(2) or other exemption from registration.[91] In the 1998 release, we concluded that a posting of offering materials on a web site was not necessarily offering activity in the United States, even though the web site is accessible by investors in the United States. This conclusion was premised on the implementation of measures both to prevent the targeting of U.S. investors and to prevent actual sales to persons in the United States or to U.S. persons in the offshore offer. A web site that is accessible in the United States cannot be used to entice U.S. investors to participate in the offering offshore. Accordingly, reliance on Regulation S to allow participation by U.S. persons offshore would not be appropriate with respect to tender or exchange offers posted on an unrestricted web site.

Business combinations present different issues from tender or exchange offers because participation by U.S. holders is not voluntary. In order to attempt to avoid U.S. jurisdiction, offerors often do not provide U.S. investors an opportunity to vote on the transaction. It is neither practicable nor desirable to treat U.S. holders differently from other security holders when their company is merged out of existence. No special precautions should be taken to prevent U.S. holders from receiving the merger consideration in a business combination involving a foreign company merely because the proxy statement/prospectus was posted on a web site available in the United States.

3. U.S. Exempt Component

The 1998 Internet Release recognized that a simultaneous private offering in the United States could accompany the offshore Internet offering.[92] In that case, special precautions must be instituted to assure that the Internet offering is not used as a general solicitation to find qualified investors in the private offering. A general solicitation for participants in a private offering is inconsistent with the requirements of section 4(2) of the Securities Act[93] as well as Regulation D.[94] Likewise, to the extent an offeror conducting an offshore exchange offer or rights offering on the Internet wishes to extend that offer to persons in the United States on a private offering basis, means must be in place to provide reasonable assurance that the web site is not used to solicit U.S. investors for the private U.S. offering. Measures to assure that the U.S. participants did not learn about the offering from the web site could include:

- Not placing U.S. investors that respond to the offshore Internet offering in the U.S. private offering;
- Extending the U.S. offer only to U.S. investors who were solicited before, or independently from, the posting of offering materials on the Internet;
- Using separate contact persons for the Internet solicitation from that for the U.S. offering; and
- Not referring to the private U.S. offering in the web site materials, except to the extent mandated by foreign law.

These measures are not exclusive. Other procedures that suffice to guard against sales to persons in the United States or to U.S. persons also can be used to demonstrate that the web site is not used to solicit U.S. investors for the private U.S. offering.

4. Domestic Issuers

In the 1998 Internet release, we expressed special concerns with U.S. companies' use of the Internet to conduct a purportedly offshore Internet offer. We stated that a domestic company could not use a web site to disseminate the offering materials, unless access to that site was limited to non-U.S. persons. This position was based on the potential for abuse when a U.S. company purports to rely on

[91] Exchange offers for securities subject to section 14(d) of the Exchange Act could not be made in the United States on a private offering basis, consistent with the all-holders provisions of Rule 14d–10.

[92] *See* note 90 *supra*, at Section IV.A.2.

[93] 15 U.S.C. 77d.

[94] 17 CFR 230.501 through 17 CFR 230.508.

Regulation S to conduct an offering of its securities solely offshore, and on our approach under Regulation S to put offshore unregistered offerings by domestic companies on the same regulatory footing as private placements.

In light of the exemptive relief adopted today, we believe that there will be very limited circumstances where a U.S. bidder would have a reason to exclude U.S. holders of the foreign subject company from an exchange or tender offer for that company. At a minimum, any U.S. offeror purporting to extend an Internet tender or exchange offer solely to non-U.S. investors should likewise limit access to the web site to non-U.S. persons.

III. Paperwork Reduction Act

Our staff submitted the amendments as proposed to the Office of Management and Budget (''OMB'') for review in accordance with the Paperwork Reduction Act of 1995 (''PRA'').[95] The title to the affected information collection is ''Form CB'' and revised ''Form F–X''. 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. This collection of information has been assigned OMB Control Nos. 3235–0518 and 3235–0379.

The rules and rule amendments exempt from the tender offer and registration rules cross-border tender offers, exchange offers, rights offerings and business combinations when U.S. ownership of the foreign private issuer is not significant. The purpose of these exemptions is to facilitate the ability of offerors to include U.S. security holders of foreign private issuers in these types of transactions. The rules and rule amendments are intended to reduce the regulations applicable to some cross-border transactions and therefore are expected to reduce the existing collection of information requirements. The amendments will eliminate certain existing reporting requirements for entities conducting an exempt tender or exchange offer. Specifically, in a tender offer that qualifies under the Tier 1 exemption, the acquiror will not need to comply with Schedule TO. Further, in an exchange offer, business combination or rights offer for foreign private issuers' securities, when U.S. security holders hold 10 percent or less of the subject securities, an acquiror will not need to file a registration statement registering the securities being issued.

[95] 44 U.S.C. 3501 *et seq.*

Rules 13e–4(h)(8)(iii)(B) and 14d–1(c)(3)(i) require bidders to disseminate any informational documents to U.S. holders in English. This may require some bidders to translate documents. We estimate that it costs approximately $.30 per word to translate an information document into English. However, we cannot estimate with certainty how many information documents will be filed, how many will need to be translated into English, or how long such documents will be.

Rules 801(a)(4)(i) and 802(a)(3)(i) under the Securities Act and Rules 13e–4(h)(8)(iii)(A), 14d–1(c)(3)(iii) under the Exchange Act require that an entity conducting an exempt tender or rights offer in connection with a cross-border transaction pursuant to the exemptions submit Form CB. Similarly, revised Rule 14d–9 requires that the company that is the subject of an exempt third party tender offer, or any officer, director or other person who otherwise would have an obligation to file Schedule 14D–9, will be exempt from such obligation if such person submits Form CB. The collection of information will be necessary so that we can determine whether the transaction meets the eligibility requirements of the exemptive rules. We also have to collect information to assure that information about the transaction will be publicly available. Security holders will thus have the opportunity to make informed investment decisions, particularly since the transactions relate to potential changes in control.

Form CB is a cover sheet that incorporates the offering documents sent to security holders pursuant to the requirements of the country in which the issuer is incorporated. Form CB also requires disclosure of the identity of the entity conducting the tender or rights offer. Form CB must be submitted to the Commission on the business day following the date the offering documents are published or disseminated to security holders in the home jurisdiction.

Form CB also requires that a non-U.S. entity must file a consent to service of process on Form F–X. Form F–X is used by certain non-U.S. entities to appoint an agent for service of process in the United States. The revisions to Form F–X add non-U.S. entities submitting a Form CB to the list of entities currently required to file Form F–X. This collection of information is necessary to provide investors with information concerning the U.S. person designated as agent for service of process.

For the tender and exchange offer exemptions, domestic and foreign entities wishing to engage in cross-border transactions or that are the target of a tender offer will likely be the respondents to the collection of information requirement. With respect to rights offerings, the likely respondents will be foreign private issuers conducting rights offerings. We have no data to help us determine how many entities will actually rely on the exemptions, because reliance on the exemptions is voluntary. As noted in the proposed release, we estimated that 824 Forms CB will be filed each year under the rules adopted today. We estimate that it will impose an estimated burden of 2 hours for a total burden of 1648 hours. We estimate that half of the entities submitting Form CB will be foreign entities that will be required to file Forms F–X (412) each year under the adopted rules. Form F–X currently is estimated to impose an estimated burden of 2 hours for a total burden of 824 hours.

The changes that have been made to the proposed rules do not affect our estimate of the number of entities that will file a Form CB for tender offers in reliance on the Tier I exemption or pursuant to an exemption from registration under Rules 801 and 802. Rules 801 and 802 use a ten percent threshold for U.S. ownership rather than the five percent threshold that was originally proposed. We also have excluded securities held by 10% U.S. holders and bidders from the calculation of U.S. ownership. We believe that any increase in the number of entities that will file a Form CB pursuant to Rules 801 and 802 because of these changes will be offset at least partially by the change in the method of calculation of U.S. ownership, which requires offerors to ''look through'' the record ownership of brokers, dealers, banks or nominees holding securities for the accounts of their customers.

Neither we nor OMB received any comments in response to our request for comment regarding the information collection obligation.

IV. Cost-Benefit Analysis

U.S. residents holding securities in foreign private issuers are often excluded from tender offers and rights offerings for the foreign private issuers' securities because of conflicts between U.S. and foreign regulation of these offers. As a result, U.S. security holders of foreign private issuers are unable to benefit fully from any premium offered in a tender offer or are unable to purchase additional securities at a discount in a rights offering.

The rules and rule amendments adopted today exempt cross-border tender offers from the tender offer rules

(the ''Tier I exemption'') and exchange offers, rights offerings and business combinations from Securities Act registration requirements when U.S. security holders hold 10 percent or less of the subject securities. When the U.S. ownership in the foreign private issuer does not exceed 40 percent, the proposal also includes exemptions from certain of the tender offer rules (the ''Tier II exemption'').

The purpose of these exemptions is to facilitate U.S. security holder participation in these types of transactions by removing regulatory barriers. The rules and rule amendments are intended to reduce the tender offer and registration requirements for cross-border transactions. We expect the exemptions to reduce the costs and burdens of extending these types of offers to U.S. security holders. U.S. security holders of foreign private issuers will benefit by being able to participate in these types of transactions. The consideration paid in a tender or exchange offer, merger or similar transaction typically reflects a premium to tendering security holders.[96] U.S. security holders who are excluded from tender or exchange offers may be subjected to a risk that the consideration they may receive in a back-end merger or business combination may not be equivalent to the consideration being paid in the tender or exchange offer. In addition, the market for the securities that are the subject of the tender or exchange offer may not be liquid enough to permit investors to buy or sell securities at comparable prices. In rights offerings, U.S. security holders who are excluded from participation lack the opportunity to purchase the issuer's securities at a discount.[97] The commenters agreed that the rules would serve to facilitate U.S. investor participation in these transactions.

Entities relying on the Tier I exemption will benefit from the rules because they will not need to comply with the procedural and filing requirements of the tender offer rules. Specifically, an acquiror will not need to file Schedule TO. In lieu of these forms, an acquiror will submit to the Commission Form CB, which is significantly less burdensome.[98] Also, a non-U.S. acquiror will file a Form F–X contemporaneously with the Form CB to appoint an agent for service of process in the United States. A number of commenters argued that Forms CB and F–X will be too burdensome and will discourage offerors from relying on the exemptions. We believe, however, that our interest in monitoring the availability of the exemptions and ensuring that U.S. security holders have access to these documents through their public availability justify the minimal burdens of preparing these forms or any increased risk of suit from making service of process and assertion of U.S. jurisdiction marginally easier.

In response to comments, the rules we adopt today permit offerors relying on the Tier I exemption to offer only cash to U.S. holders, even if securities are offered to foreign investors. Offerors offering a cash-only alternative to U.S. security holders, however, must obtain an opinion from an independent third party stating that the cash being offered to U.S. security holders is substantially equivalent to the value of the securities being offered to foreign security holders, unless the offeror's securities are ''margin securities'' within the meaning of Regulation T. In the latter case, the offeror need only provide information on recent trading prices of the offeror's securities in lieu of an opinion.

Similarly, entities relying on Rules 801 or 802 in connection with a rights offer or exchange offer will benefit from the rules because they will not need to comply with the Securities Act registration requirements. Specifically, an issuer will not need to file the registration forms, including Forms S–1, S–2, S–3, S–4, F–1, F–2, F–3 and F–4. Instead of these forms, an issuer will submit Form CB and, if the issuer is a non-U.S. entity, file Form F–X, which as discussed above are significantly less burdensome.

We estimate that Form CB and Form F–X will take substantially less time to prepare than Schedule TO or a registration statement.[99] In addition, we believe it takes a lesser degree of professional skill, including that of securities lawyers and accountants, to prepare a Form CB and Form F–X than to prepare a Schedule TO or a registration statement. In some cases, the professional skills required will include the ability to translate from a foreign language into English.

Entities relying on the Tier I and Tier II exemptions will also benefit from the proposals because they will not need to comply with all of the procedural requirements of the tender offer rules.[100] For example, in the Tier I exemption, an acquiror will be exempt from all of the procedural requirements of the U.S. tender offer rules, including those relating to the duration of the offer and withdrawal rights.

In the Tier II exemption, an acquiror will receive limited relief from the Commission's tender offer rules. The Tier II exemption provides relief from the U.S. tender offer rules that are common impediments to extending offers to U.S. security holders. However, an acquiror relying on the Tier II exemption will have to comply with the remaining tender offer provisions. These provisions include, among others, the following: (1) Keeping the offer open 20 business days; (2) filing a Schedule TO; (3) disseminating the offering documents; and (4) offering withdrawal rights. Although compliance with these requirements may impose costs to cross-border tender offers, compliance will still be less burdensome than satisfying all the U.S. tender offer requirements or applying to the Commission for exemptive relief.

The transfer restrictions that we adopt today provide that to the extent the securities that are the subject of an exchange offer, business combination or rights offering are ''restricted securities'' under Rule 144 in the hands of the U.S. investor, then securities acquired by that investor in the transaction will be ''restricted securities.'' The transfer restrictions are the same as we proposed with respect to exchange offers and business combinations but are less restrictive than those proposed for rights offerings. We had proposed that securities received in a rights offering pursuant to Rule 801 be restricted whether or not the securities that are subject to the offering were restricted. We are persuaded by the large number

[96] Of the 403 tender offers for foreign companies by foreign bidders recorded by Securities Data Corporation in 1998, Securities Data Corporation reports an average premium of over 42% for 215 transactions, measured from four weeks prior to the first bid. If the premium is measured from the price one day before the bid, the average premium drops to 38%.

For the period 1971 to 1991, the average historical merger premium was over 23% as reported in G.W. Schwert, ''Markup Pricing in Mergers and Acquisitions,'' *Journal of Financial Economics, 41* (1996). The premium is measured from four weeks prior to the first bid. Excluding this period, the premium remains over 10%.

[97] *Supra* note 54.

[98] *See* Section II.A.2. *supra* for a description of the Form CB. *See* note 99, *infra,* for information regarding the estimated burden associated with Form CB as compared to the current reporting requirements.

[99] For purposes of the Paperwork Reduction Act, we estimate that Forms CB and F–X will impose an estimated burden of two hours per Form. This contrasts with Schedule TO which has an estimated burden of 586 hours per form, and Forms S–1, S–2, S–3, S–4, F–1, F–2, F–3 and F–4 which have an estimated burden of 1,239, 470, 397, 1,233, 1,868, 1,397, 166, and 1,308 hours per form, respectively.

[100] We cannot quantify the cost savings that will result from not imposing the procedural requirements of the tender offer rules because we do not know how many companies will use the exemption or how much compliance with these particular aspects of the tender offer rules from which an exemption is granted would cost. Commenters did not provide us with any such data.

of commenters who argued that requiring unaffiliated U.S. security holders to accept restricted securities when they currently hold unrestricted securities is not necessary nor desirable.

The rules we adopt today base the method of calculation of the amount of the subject securities held by U.S. holders on the method of calculation used in Rule 12g3–2(a) under the Exchange Act. That method more closely reflects the beneficial ownership of the issuer's securities. Rule 12g3–2(a) requires the offeror to ''look through'' the record ownership of brokers, dealers, banks or nominees holding securities for the accounts of their customers to determine the residency of those customers. Offerors also must take into account information regarding U.S. ownership derived from beneficial ownership reports that are provided to the issuer or filed publicly, whether in the United States or other countries, as well as information that otherwise is provided to the issuer or offeror.

Several commenters on the proposed release and the international disclosure standards proposing release suggested that using a beneficial ownership test would create a substantial burden for companies that trade in many different markets, and that widely-held companies would have to invest significant effort and expense in determining beneficial ownership in many jurisdictions where the likelihood of finding U.S. owners is small. In order to address these concerns, we have limited the application of the ''look through'' provisions of Rule 12g3–2(a) to voting securities held of record (1) in the United States, (2) in the issuer's home jurisdiction, and (3) in the primary trading market for the issuer's securities if different from the issuer's home jurisdiction. These jurisdictions should cover most of the trading volume for the issuer's securities, and searches in these jurisdictions are likely to yield the greatest number of U.S. beneficial owners. This modification to the test should reduce the burden on foreign companies while still producing a reasonably accurate picture of whether U.S. ownership exceeds the specified thresholds.

Some commenters pointed out that it is not always possible for issuers to obtain information about separate customer accounts, as required by Rule 12g3–2(a). As noted in the discussion above, we have minimized this burden. In any event, if after reasonable inquiry, the offeror is unable to obtain information about the nominee's customer accounts, including when the nominee's fees would be unreasonable, the offeror may rely on a presumption that the customer accounts are held in the nominee's principal place of business.

No specific data was provided in response to the Commission's request in the proposing release regarding the costs and benefits associated with today's amendments. We have anecdotal information regarding numerous transactions that have excluded U.S. security holders. The commenters also agreed that these exclusionary offers are common practice. Because offerors do not file documents with the Commission when U.S. security holders are excluded, we cannot calculate the number of cross-border transactions that have excluded U.S. security holders with certainty. Further, if the transaction is a tender offer for securities that are not registered under section 12 of the Exchange Act, and is subject only to Regulation 14E, there is no filing obligation. Therefore, we are unable to estimate the number of entities that will take advantage of the exemptions. While we are unable to determine how many U.S. security holders will benefit from the rules by being able to participate in cross-border tender, exchange and rights offerings, we believe that the rules will benefit U.S. security holders by removing regulatory barriers to including U.S. security holders in these types of offers. The commenters agreed.

V. Findings and Considerations

A. Effect on Competition/Exchange Act Section 23(a)

Section 23(a) of the Exchange Act [101] requires us, in adopting rules under the Exchange Act, to consider the impact any rule would have on competition. We cannot adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. We did not receive any information on the impact of increased competition for capital for domestic companies as a result of an increase in securities offered into the United States by foreign companies or as to whether the benefit to U.S. investors will offset the cost of any such increased competition for capital. Because the rules we adopt today are designed to allow U.S. investors to participate in the full benefits of security ownership that they are currently denied when U.S. ownership of the foreign private issuer is relatively small, we do not believe the relative cost will be large. Exempting foreign tender, exchange and rights offers from certain federal securities laws may have a competitive effect on U.S. issuers, who remain subject to all federal securities laws. We believe these effects are justified in order to benefit U.S. shareholders in foreign companies. Therefore, our view is that any anticompetitive effects of the rules adopted today for cross-border tender and exchange offers, business combinations and rights offerings are necessary or appropriate in the public interest.

B. Promotion of Efficiency, Competition and Capital Formation

Section 2(b) [102] of the Securities Act and Section 3(f) [103] of the Exchange Act, as amended by the National Securities Markets Improvement Act of 1996, [104] provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. For the reasons stated above, we believe the rules will facilitate a variety of cross-border transactions, thereby enhancing the efficiency of global competition for capital.

C. Exemptive Authority Findings

We find that it is appropriate, in the public interest and consistent with the protection of investors, as well as the purposes fairly intended by the Trust Indenture Act: (i) To exempt eligible tender offers from certain provisions of the Exchange Act and the rules thereunder relating to tender offers, as described in this release, (ii) to exempt eligible tender and exchange offers, business combinations and rights offerings from the registration provisions of the Securities Act, as described in this release, (iii) to exempt eligible exchange offers or business combinations from the Trust Indenture Act, as described in this release, and (iv) to amend the Commission's general organization rules in order to delegate to the Directors of the Divisions of Corporation Finance and Market Regulation authority to exempt tender offers from specific tender offer requirements.

We make these findings based on the reasons described in the release. In particular, we believe that U.S. investors will benefit by the exemptions because they will facilitate the inclusion of U.S. investors in cross-border tender and

[101] 15 U.S.C. 78w(a).

[102] 15 U.S.C. 77b(b).

[103] 15 U.S.C. 78c(f).

[104] Pub. L. No. 104–290, section 106, 110 Stat. 3416 (1996).

exchange offers, business combinations and rights offerings. Our use of exemptive authority will enable U.S. holders to have the opportunity to receive a premium for their securities in a tender or exchange offer and to participate in investment opportunities on an equal basis with foreign security holders. Similarly, the rules will enable U.S. security holders to have the opportunity to purchase shares at a possible discount from market price in cross-border rights offerings. Moreover, investors will still receive the protections of the antifraud provisions of the federal securities laws.

D. Delegated Authority

The Commission also finds, in accordance with section 553(d) of the Administrative Procedure Act,[105] that the delegation of exemptive authority in this release relates to agency organization, procedure, or practice. Accordingly, the delegation is effective upon publication.

VI. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with 5 U.S.C. 604 regarding the rules being adopted today. The analysis notes that the adopted rules are intended primarily to facilitate tender and rights offerings for securities of foreign private issuers held by U.S. residents. The resulting reduction in the expense, time and effort of making such offerings will benefit U.S. security holders. These persons normally are excluded from such offerings. Entities that wish to extend these offers to U.S. security holders also will benefit because it will be cheaper for them to comply with U.S. securities laws and easier to make offers to U.S. security holders.

The adopted rules are limited to tender offers and exchange offers for the securities of foreign private issuers. But both foreign and domestic bidders, whatever their size, are eligible to use these exemptions. Only foreign private issuers are eligible to use the exemption for rights offerings. Small entities can rely on the adopted tender and exchange offer exemptions on the same basis as larger entities, so long as they meet the conditions for relying on them.

We know of approximately 836 Exchange Act reporting companies that are not investment companies that currently satisfy the definition of ''small business'' under Rule 0–10. There are approximately 320 investment companies that satisfy the ''small business'' definition. We have no data to determine how many reporting or non-reporting small businesses may actually rely on the rules, or may otherwise be affected by the rules. However, we believe that the rules will result in a substantial savings to entities (both small and large) that qualify for the exemptions. Qualifying entities under the Tier I and Securities Act exemptions will not have to comply with the tender offer and registration requirements of the U.S. securities laws.

The FRFA notes that the adopted rules will eliminate certain existing reporting requirements for entities conducting an exempt tender or exchange offer. Specifically, an acquiror under Tier I will not need to file Schedule TO. Further, in a rights or exchange offer, an acquiror will not need to register the securities being issued. In place of these filing obligations, an acquiror relying on the new exemptions will submit, rather than file, Form CB. Form CB is merely a cover sheet that incorporates the offering documents sent to security holders pursuant to the requirements of the country in which the issuer is incorporated. Also, a non-U.S. acquiror will file a Form F–X contemporaneously with the Form CB to appoint an agent for service of process in the United States. We believe Form CB and Form F–X are significantly less burdensome to prepare than a Schedule TO or a registration statement.

As stated in the analysis, we considered several alternatives to the rules adopted today, including:

- The Commission considered requiring that offerors deliver rights offering materials to U.S. investors, even if those materials were only published overseas, as proposed. In order to encourage foreign private issuers to include U.S. security holders in rights offerings, the rules adopted today provide that for both rights offerings and exchange offers, the offeror must disseminate any informational documents to U.S. holders, in English, on a comparable basis to that provided to security holders in the offeror's home jurisdiction. If the offeror disseminates by publication in its home jurisdiction, the offeror must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer. We were persuaded by those commenters who indicated that offerors will not be inclined to avail themselves of Rules 801 or 802 if burdensome documentation and dissemination requirements are imposed by the U.S. rules. This will minimize the burden on offerors in rights offerings, including small businesses.
- The Commission considered whether to require a valuation opinion in all cases where an offeror chooses to offer U.S. security holders cash in lieu of the securities, cash and other consideration offered to non-U.S. security holders in reliance on the Tier I exemption. We decided to only require a valuation opinion where the offered securities are not ''margin securities'' within the meaning of Regulation T in order to minimize the burden on offerors, including small businesses.
- The Commission considered whether to use a beneficial ownership test in determining U.S. ownership. In reviewing the method of determining U.S. ownership, we were persuaded by those commenters that suggested that a beneficial ownership test would create a substantial burden for companies that trade in many different markets, and that widely-held companies would have to invest significant effort and expense in determining beneficial ownership in many jurisdictions where the likelihood of finding U.S. owners is small. In order to address these concerns, we limited the application of the ''look through'' provisions of Rule 12g3–2(a) to voting securities held of record (1) in the United States, (2) in the issuer's home jurisdiction, and (3) in the primary trading market for the issuer's securities if different from the issuer's home jurisdiction. This modification to the test should reduce the burden on companies, including small businesses, while still producing a reasonably accurate picture of whether U.S. ownership exceeds the specified thresholds.
- The Commission considered permitting registration of securities issued in rights offering and exchange offers to be based on home country documents. However, the Commission determined not to repropose a home-country based registration system because the disclosure and accounting standards of foreign jurisdictions are not always consistent with the level of prospectus disclosure expected in a registered offer under the Securities Act. Further, a registration-based exemption would lead to a periodic reporting obligation that small entities might find burdensome.

The analysis also indicates that the rules and forms being adopted today do not duplicate or conflict with any existing federal rule provisions.

We requested but received no comments on the Initial Regulatory Flexibility Analysis prepared in connection with the proposing release. A copy of the FRFA may be obtained by

[105] 5 U.S.C. 553(d).

contacting Laura Badian, in the Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549, at (202) 942–2920.

VII. Statutory Basis and Text of Amendments

We are adopting these revisions pursuant to sections 3(b), 7, 8, 10, 19 and 28 of the Securities Act, sections 12, 13, 14, 23 and 36 of the Exchange Act, and section 304 of the Trust Indenture Act.

List of Subjects

17 CFR Part 200

Authority delegations (Government agencies).

17 CFR Parts 230, 239, 240, 249 and 260

Reporting and recordkeeping requirements, Securities.

Final Rule

In accordance with the foregoing, we are amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. By amending § 200.30–1 by adding paragraph (e)(16) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(e) * * *

(16) To grant requests for exemptions from:

(i) Tender offer provisions of sections 13(e) and 14(d)(1) through 14(d)(7) of the Act (15 U.S.C. 78m(e) and 78n(d)(1) through 78n(d)(7)), Rule 13e–3 (§ 240.13e–3 of this chapter) and Rule 13e–4 (§ 240.13e–4 of this chapter), Regulation 14D (§§ 240.14d–1 through 240.14d–11 of this chapter) and Schedules 13E–3, TO, and 14D–9 (§§ 240.13e–100, 240.14d–100 and 240.14d–101 of this chapter) thereunder, pursuant to Sections 14(d)(5), 14(d)(8)(C) and 36(a) of the Act (15 U.S.C. 78n(d)(5), 78(d)(8)(C), and 78mm(a)); and

(ii) The tender offer provisions of Rules 14e–1, 14e–2 and 14e–5 of Regulation 14E (§§ 240.14e–1, 240.14e–2 and 240.14e–5 of this chapter) pursuant to section 36(a) of the Act (15 U.S.C. 78mm(a)).

* * * * *

3. By amending § 200.30–3 by adding paragraph (a)(68) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(68) Pursuant to Section 36(a) of the Act, 15 U.S.C. 78mm(a), to grant requests for exemptions from the tender offer provisions of Rule 14e–1 of Regulation 14E (§ 240.14e–1 of this chapter).

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

5. By amending § 230.144 as follows:

a. By removing the word ''and'' at the end of paragraph (a)(3)(iv),

b. Removing the period and adding in its place ''; '' at the end of paragraph (a)(3)(v), and

c. Adding paragraphs (a)(3)(vi) and (vii) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(a) * * *

(3) * * *

(vi) Securities acquired in a transaction made under § 230.801 to the same extent and proportion that the securities held by the security holder of the class with respect to which the rights offering was made were as of the record date for the rights offering ''restricted securities'' within the meaning of this paragraph (a)(3); and

(vii) Securities acquired in a transaction made under § 230.802 to the same extent and proportion that the securities that were tendered or exchanged in the exchange offer or business combination were ''restricted securities'' within the meaning of this paragraph (a)(3).

* * * * *

6. By adding §§ 230.800 through 230.802 and an undesignated center heading to read as follows:

Exemptions for Cross-Border Rights Offerings, Exchange Offers and Business Combinations

General Notes to §§ 230.800, 230.801 and 230.802

1. Sections 230.801 and 230.802 relate only to the applicability of the registration provisions of the Act (15 U.S.C. 77e) and not to the applicability of the anti-fraud, civil liability or other provisions of the federal securities laws.

2. The exemptions provided by § 230.801 and § 230.802 are not available for any securities transaction or series of transactions that technically complies with § 230.801 and § 230.802 but are part of a plan or scheme to evade the registration provisions of the Act.

3. An issuer who relies on § 230.801 or an offeror who relies on § 230.802 must still comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and any other applicable provisions of the federal securities laws.

4. An issuer who relies on § 230.801 or an offeror who relies on § 230.802 must still comply with any applicable state laws relating to the offer and sale of securities.

5. Attempted compliance with § 230.801 or § 230.802 does not act as an exclusive election; an issuer making an offer or sale of securities in reliance on § 230.801 or § 230.802 may also rely on any other applicable exemption from the registration requirements of the Act.

6. Section 230.801 and § 230.802 provide exemptions only for the issuer of the securities and not for any affiliate of that issuer or for any other person for resales of the issuer's securities. These sections provide exemptions only for the transaction in which the issuer or other person offers or sells the securities, not for the securities themselves. Securities acquired in a § 230.801 or § 230.802 transaction may be resold in the United States only if they are registered under the Act or an exemption from registration is available.

7. Unregistered offers and sales made outside the United States will not affect contemporaneous offers and sales made in compliance with § 230.801 or § 230.802. A transaction that complies with § 230.801 or § 230.802 will not be integrated with offerings exempt under other provisions of the Act, even if both transactions occur at the same time.

8. Securities acquired in a rights offering under § 230.801 are ''restricted securities'' within the meaning of § 230.144(a)(3) to the same extent and proportion that the securities held by the security holder as of the record date for the rights offering were restricted securities. Likewise, securities acquired in an exchange offer or business combination subject to § 230.802 are ''restricted securities'' within the meaning of § 230.144(a)(3) to the same extent and proportion that the securities tendered or exchanged by the security holder in that transaction were restricted securities.

9. Section 230.801 does not apply to a rights offering by an investment company registered or required to be registered under the Investment Company Act of 1940 (15

U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company. Section 230.802 does not apply to exchange offers or business combinations by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

§ 230.800 Definitions for §§ 230.800, 230.801 and 230.802.

The following definitions apply in §§ 230.800, 230.801 and 230.802.

(a) *Business combination. Business combination* means a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of security holders of one or more of the participating companies. It also includes a statutory short form merger that does not require a vote of security holders.

(b) *Equity security. Equity security* means the same as in § 240.3a11–1 of this chapter, but for purposes of this section only does not include:

(1) Any debt security that is convertible into an equity security, with or without consideration;

(2) Any debt security that includes a warrant or right to subscribe to or purchase an equity security;

(3) Any such warrant or right; or

(4) Any put, call, straddle, or other option or privilege that gives the holder the option of buying or selling a security but does not require the holder to do so.

(c) *Exchange offer. Exchange offer* means a tender offer in which securities are issued as consideration.

(d) *Foreign private issuer. Foreign private issuer* means the same as in § 230.405 of Regulation C.

(e) *Foreign subject company. Foreign subject company* means any foreign private issuer whose securities are the subject of the exchange offer or business combination.

(f) *Home jurisdiction. Home jurisdiction* means both the jurisdiction of the foreign subject company's (or in the case of a rights offering, the foreign private issuer's) incorporation, organization or chartering and the principal foreign market where the foreign subject company's (or in the case of a rights offering, the issuer's) securities are listed or quoted.

(g) *Rights offering. Rights offering* means offers and sales for cash of equity securities where:

(1) The issuer grants the existing security holders of a particular class of equity securities (including holders of depositary receipts evidencing those securities) the right to purchase or subscribe for additional securities of that class; and

(2) The number of additional shares an existing security holder may purchase initially is in proportion to the number of securities he or she holds of record on the record date for the rights offering. If an existing security holder holds depositary receipts, the proportion must be calculated as if the underlying securities were held directly.

(h) *U.S. holder. U.S. holder* means any security holder resident in the United States. To determine the percentage of outstanding securities held by U.S. holders:

(1) Calculate percentage of outstanding securities held by U.S. holders as of the record date for a rights offering, or 30 days before the commencement of an exchange offer or the solicitation for a business combination.

(2) Include securities underlying American Depositary Shares convertible or exchangeable into the securities that are the subject of the tender offer when calculating the number of subject securities outstanding, as well as the number held by U.S. holders. Exclude from the calculations other types of securities that are convertible or exchangeable into the securities that are the subject of the exchange offer, business combination or rights offering, such as warrants, options and convertible securities. Exclude from those calculations securities held by persons who hold more than 10 percent of the subject securities in an exchange offer, business combination or rights offering, or that are held by the offeror in an exchange offer or business combination;

(3) Use the method of calculating record ownership in Rule 12g3–2(a) under the Exchange Act (§ 240.12g3–2(a) of this chapter), except that your inquiry as to the amount of securities represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in the United States, the subject company's jurisdiction of incorporation or that of each participant in a business combination, and the jurisdiction that is the primary trading market for the subject securities, if different from the subject company's jurisdiction of incorporation;

(4) If, after reasonable inquiry, you are unable to obtain information about the amount of securities represented by accounts of customers resident in the United States, you may assume, for purposes of this provision, that the customers are residents of the jurisdiction in which the nominee has its principal place of business.

(5) Count securities as owned by U.S. holders when publicly filed reports of beneficial ownership or information that is otherwise provided to you indicates that the securities are held by U.S. residents.

(i) *United States. United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

§ 230.801 Exemption in connection with a rights offering.

A rights offering is exempt from the provisions of Section 5 of the Act (15 U.S.C. 77e), so long as the following conditions are satisfied:

(a) *Conditions.*—(1) *Eligibility of issuer.* The issuer is a foreign private issuer on the date the securities are first offered to U.S. holders.

(2) *Limitation on U.S. ownership.* U.S. holders hold no more than 10 percent of the outstanding class of securities that is the subject of the rights offering (as determined under the definition of ''U.S. holder'' in § 230.800(h)).

(3) *Equal treatment.* The issuer permits U.S. holders to participate in the rights offering on terms at least as favorable as those offered the other holders of the securities that are the subject of the offer. The issuer need not, however, extend the rights offering to security holders in those states or jurisdictions that require registration or qualification.

(4) *Informational documents.* (i) If the issuer publishes or otherwise disseminates an informational document to the holders of the securities in connection with the rights offering, the issuer must furnish that informational document, including any amendments thereto, in English, to the Commission on Form CB (§ 239.800 of this chapter) by the first business day after publication or dissemination. If the issuer is a foreign company, it must also file a Form F–X (§ 239.42 of this chapter) with the Commission at the same time as the submission of Form CB to appoint an agent for service in the United States.

(ii) The issuer must disseminate any informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the home jurisdiction.

(iii) If the issuer disseminates by publication in its home jurisdiction, the issuer must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

(5) *Eligibility of securities.* The securities offered in the rights offering are equity securities of the same class as the securities held by the offerees in the

United States directly or through American Depositary Receipts.

(6) *Limitation on transferability of rights.* The terms of the rights prohibit transfers of the rights by U.S. holders except in accordance with Regulation S (§ 230.901 through § 230.905).

(b) *Legends.* The following legend or an equivalent statement in clear, plain language, to the extent applicable, appears on the cover page or other prominent portion of any informational document the issuer disseminates to U.S. holders:

This rights offering is made for the securities of a foreign company. The offer is subject to the disclosure requirements of a foreign country that are different from those of the United States. Financial statements included in the document, if any, have been prepared in accordance with foreign accounting standards that may not be comparable to the financial statements of United States companies.

It may be difficult for you to enforce your rights and any claim you may have arising under the federal securities laws, since the issuer is located in a foreign country, and some or all of its officers and directors may be residents of a foreign country. You may not be able to sue the foreign company or its officers or directors in a foreign court for violations of the U.S. securities laws. It may be difficult to compel a foreign company and its affiliates to subject themselves to a U.S. court's judgment.

§ 230.802 Exemption for offerings in connection with an exchange offer or business combination for the securities of foreign private issuers.

Offers and sales in any exchange offer for a class of securities of a foreign private issuer, or in any exchange of securities for the securities of a foreign private issuer in any business combination, are exempt from the provisions of section 5 of the Act (15 U.S.C. 77e), if they satisfy the following conditions:

(a) *Conditions to be met.*—(1) *Limitation on U.S. ownership.* Except in the case of an exchange offer or business combination that is commenced during the pendency of a prior exchange offer or business combination made in reliance on this paragraph, U.S. holders of the foreign subject company must hold no more than 10 percent of the securities that are the subject of the exchange offer or business combination (as determined under the definition of ''U.S. holder'' in § 230.800(h)). In the case of a business combination in which the securities are to be issued by a successor registrant, U.S. holders may hold no more than 10 percent of the class of securities of the successor registrant, as if measured immediately after completion of the business combination.

(2) *Equal treatment.* The issuer must permit U.S. holders to participate in the exchange offer or business combination on terms at least as favorable as those offered any other holder of the subject securities. The issuer, however, need not extend the offer to security holders in those states or jurisdictions that require registration or qualification, except that the issuer must offer the same cash alternative to security holders in any such state that it has offered to security holders in any other state or jurisdiction.

(3) *Informational documents.* (i) If the issuer publishes or otherwise disseminates an informational document to the holders of the subject securities in connection with the exchange offer or business combination, the issuer must furnish that informational document, including any amendments thereto, in English, to the Commission on Form CB (§ 239.800 of this chapter) by the first business day after publication or dissemination. If the bidder is a foreign company, it must also file a Form F–X (§ 239.42 of this chapter) with the Commission at the same time as the submission of Form CB to appoint an agent for service in the United States.

(ii) The issuer must disseminate any informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the foreign subject company's home jurisdiction.

(iii) If the issuer disseminates by publication in its home jurisdiction, the issuer must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

(b) *Legends.* The following legend or an equivalent statement in clear, plain language, to the extent applicable, must be included on the cover page or other prominent portion of any informational document the offeror publishes or disseminates to U.S. holders:

This exchange offer or business combination is made for the securities of a foreign company. The offer is subject to disclosure requirements of a foreign country that are different from those of the United States. Financial statements included in the document, if any, have been prepared in accordance with foreign accounting standards that may not be comparable to the financial statements of United States companies.

It may be difficult for you to enforce your rights and any claim you may have arising under the federal securities laws, since the issuer is located in a foreign country, and some or all of its officers and directors may be residents of a foreign country. You may not be able to sue a foreign company or its officers or directors in a foreign court for violations of the U.S. securities laws. It may be difficult to compel a foreign company and its affiliates to subject themselves to a U.S. court's judgment.

You should be aware that the issuer may purchase securities otherwise than under the exchange offer, such as in open market or privately negotiated purchases.

(c) *Presumption for certain offers.* For exchange offers conducted by persons other than the issuer of the subject securities or its affiliates, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold 10 percent or less of the outstanding subject securities, unless:

(1) The exchange offer is made pursuant to an agreement with the issuer of the subject securities;

(2) The aggregate trading volume of the subject class of securities on all national securities exchanges in the United States, on the Nasdaq market or on the OTC market, as reported to the NASD, over the 12-calendar-month period ending 30 days before commencement of the offer, exceeds 10 percent of the worldwide aggregate trading volume of that class of securities over the same period;

(3) The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission indicates that U.S. holders hold more than 10 percent of the outstanding subject class of securities; or

(4) The offeror knows, or has reason to know, that U.S. ownership exceeds 10 percent of the subject securities.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

7. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

8. By amending § 239.42 as follows:

a. By revising the section heading;

b. At the end of paragraph (e), removing the word ''and'';

c. At the end of paragraph (f), removing the period and adding ''; and''; and

d. By adding paragraph (g).

The revisions to § 239.42 read as follows:

§ 239.42 Form F–X, for appointment of agent for service of process and undertaking for issuers registering securities on Form F–8, F–9, F–10, or F–80 (§§ 239.38, 239.39, 239.40, or 239.41 of this chapter) or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F (§§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter), by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 239.37 of this chapter), F–8, F–9, F–10, F–80 or SB–2 (§ 239.10 of this chapter), or by a Canadian issuer qualifying an offering statement pursuant to Regulation A (§ 230.251 et seq.) on Form 1–A (§ 239.90 of this chapter), or registering securities on Form SB–2, or by any non-U.S. issuer providing Form CB to the Commission in connection with a tender offer, rights offering or business combination.

* * * * *

(g) By any non-U.S. issuer providing Form CB to the Commission in connection with a tender offer, rights offering or business combination.

§ 239.42 (Form F–X) [amended]

8a. By amending Form F–X (referenced in § 239.42 of this chapter) General Instruction 1 by adding paragraph (g) and revising Item II.F.(b) to read as follows:

[Note: Form F–X does not and this amendment will not appear in the Code of Federal Regulations.]

Form F–X

General Instructions

1. Form F–X must be filed with the Commission:

* * * * *

(g) by any non-U.S. issuer providing Form CB to the Commission in connection with a tender offer, rights offering or business combination.

* * * * *

II. * * *

F. * * *

(b) The use of Form F–8, Form F–80 or Form CB stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed following the effective date of the latest amendment to such Form F–8, Form F–80 or Form CB;

* * * * *

9. By adding § 239.800 and Form CB to read as follows:

§ 239.800 Form CB, report of sales of securities in connection with an exchange offer or a rights offering.

This Form is used to report sales of securities in connection with a rights offering in reliance upon § 230.801 of this chapter and to report sales of securities in connection with an exchange offer or business combination in reliance upon § 230.802 of this chapter.

Note: Form CB does not appear in the Code of Federal Regulations. Form CB is attached as Appendix A.

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, 78*l*, 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.

* * * * *

11. By amending § 240.13e–3 by adding paragraph (g)(6) to read as follows:

§ 240.13e–3 Going private transactions by certain issuers or their affiliates.

* * * * *

(g) *Exceptions.* * * *

* * * * *

(6) Any tender offer or business combination made in compliance with § 230.802 of this chapter, § 240.13e–4(h)(8) or § 240.14d–1(c).

12. By amending § 240.13e–4 as follows:

a. By removing the word ''or'' at the end of paragraph (h)(7);

b. Redesignating paragraph (h)(8) as (h)(9); and to

c. Adding new paragraphs (h)(8) and (i) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(h) * * *

(8) *Cross-border tender offers (Tier I).* Any issuer tender offer (including any exchange offer) where the issuer is a foreign private issuer as defined in § 240.3b–4 if the following conditions are satisfied.

(i) Except in the case of an issuer tender offer which is commenced during the pendency of a tender offer made by a third party in reliance on § 240.14d–1(c), U.S. holders do not hold more than 10 percent of the class of securities sought in the offer (as determined under Instruction 2 to paragraph (h)(8) and paragraph (i) of this section); and

(ii) The issuer or affiliate must permit U.S. holders to participate in the offer on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the offer; however:

(A) *Registered exchange offers.* If the issuer or affiliate offers securities registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the issuer or affiliate need not extend the offer to security holders in those states or jurisdictions that prohibit the offer or sale of the securities after the issuer or affiliate has made a good faith effort to register or qualify the offer and sale of securities in that state or jurisdiction, except that the issuer or affiliate must offer the same cash alternative to security holders in any such state or jurisdiction that it has offered to security holders in any other state or jurisdiction.

(B) *Exempt exchange offers.* If the issuer or affiliate offers securities exempt from registration under § 230.802 of this chapter, the issuer or affiliate need not extend the offer to security holders in those states or jurisdictions that require registration or qualification, except that the issuer or affiliate must offer the same cash alternative to security holders in any such state or jurisdiction that it has offered to security holders in any other state or jurisdiction.

(C) *Cash only consideration.* The issuer or affiliate may offer U.S. holders cash only consideration for the tender of the subject securities, notwithstanding the fact that the issuer or affiliate is offering security holders outside the United States a consideration that consists in whole or in part of securities of the issuer or affiliate, if the issuer or affiliate has a reasonable basis for believing that the amount of cash is substantially equivalent to the value of the consideration offered to non-U.S. holders, and either of the following conditions are satisfied:

(*1*) The offered security is a ''margin security'' within the meaning of Regulation T (12 CFR 220.2) and the issuer or affiliate undertakes to provide, upon the request of any U.S. holder or the Commission staff, the closing price and daily trading volume of the security on the principal trading market for the security as of the last trading day of each of the six months preceding the announcement of the offer and each of the trading days thereafter; or

(*2*) If the offered security is not a ''margin security'' within the meaning of Regulation T (12 CFR 220.2), the issuer or affiliate undertakes to provide, upon the request of any U.S. holder or the Commission staff, an opinion of an independent expert stating that the cash consideration offered to U.S. holders is substantially equivalent to the value of

the consideration offered security holders outside the United States.

(D) *Disparate tax treatment.* If the issuer or affiliate offers ''loan notes'' solely to offer sellers tax advantages not available in the United States and these notes are neither listed on any organized securities market nor registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the loan notes need not be offered to U.S. holders.

(iii) *Informational documents.* (A) If the issuer or affiliate publishes or otherwise disseminates an informational document to the holders of the securities in connection with the issuer tender offer (including any exchange offer), the issuer or affiliate must furnish that informational document, including any amendments thereto, in English, to the Commission on Form CB (§ 249.480 of this chapter) by the first business day after publication or dissemination. If the issuer or affiliate is a foreign company, it must also file a Form F–X (§ 239.42 of this chapter) with the Commission at the same time as the submission of Form CB to appoint an agent for service in the United States.

(B) The issuer or affiliate must disseminate any informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the home jurisdiction.

(C) If the issuer or affiliate disseminates by publication in its home jurisdiction, the issuer or affiliate must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

(iv) An investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company, may not use this paragraph (h)(8); or

* * * * *

(i) *Cross-border tender offers (Tier II).* Any issuer tender offer (including any exchange offer) that meets the conditions in paragraph (i)(1) of this section shall be entitled to the exemptive relief specified in paragraph (i)(2) of this section provided that such issuer tender offer complies with all the requirements of this section other than those for which an exemption has been specifically provided in paragraph (i)(2) of this section:

(1) *Conditions.* (i) The issuer is a foreign private issuer as defined in § 240.3b–4 and is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company; and

(ii) Except in the case of an issuer tender offer which is commenced during the pendency of a tender offer made by a third party in reliance on § 240.14d–1(d), U.S. holders do not hold more than 40 percent of the class of securities sought in the offer (as determined under Instruction 2 to paragraphs (h)(8) and (i) of this section).

(2) *Exemptions.* The issuer tender offer shall comply with all requirements of this section other than the following:

(i) *Equal treatment—loan notes.* If the issuer or affiliate offers loan notes solely to offer sellers tax advantages not available in the United States and these notes are neither listed on any organized securities market nor registered under the Securities Act (15 U.S.C. 77a *et seq.*), the loan notes need not be offered to U.S. holders, notwithstanding paragraph (f)(8) and (h)(9) of this section.

(ii) *Equal treatment—separate U.S. and foreign offers.* Notwithstanding the provisions of paragraph (f)(8) of this section, an issuer or affiliate conducting an issuer tender offer meeting the conditions of paragraph (i)(1) of this section may separate the offer into two offers: One offer made only to U.S. holders and another offer made only to non-U.S. holders. The offer to U.S. holders must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offer.

(iii) *Notice of extensions.* Notice of extensions made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of § 240.14e–1(d).

(iv) *Prompt payment.* Payment made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of § 240.14e–1(c).

Instructions to paragraph (h)(8) and (i) of this section:

1. *Home jurisdiction* means both the jurisdiction of the issuer's incorporation, organization or chartering and the principal foreign market where the issuer's securities are listed or quoted.

2. *U.S. holder* means any security holder resident in the United States. To determine the percentage of outstanding securities held by U.S. holders:

i. Calculate the U.S. ownership as of 30 days before the commencement of the issuer tender offer;

ii. Include securities underlying American Depositary Shares convertible or exchangeable into the securities that are the subject of the tender offer when calculating the number of subject securities outstanding, as well as the number held by U.S. holders. Exclude from the calculations other types of securities that are convertible or exchangeable into the securities that are the subject of the tender offer, such as warrants, options and convertible securities. Exclude from those calculations securities held by persons who hold more than 10 percent of the subject securities;

iii. Use the method of calculating record ownership in § 240.12g3–2(a), except that your inquiry as to the amount of securities represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in the United States, your jurisdiction of incorporation, and the jurisdiction that is the primary trading market for the subject securities, if different than your jurisdiction of incorporation;

iv. If, after reasonable inquiry, you are unable to obtain information about the amount of securities represented by accounts of customers resident in the United States, you may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business; and

v. Count securities as beneficially owned by residents of the United States as reported on reports of beneficial ownership that are provided to you or publicly filed and based on information otherwise provided to you.

3. *United States. United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

4. The exemptions provided by paragraphs (h)(8) and (i) of this section are not available for any securities transaction or series of transactions that technically complies with paragraph (h)(8) or (i) of this section but are part of a plan or scheme to evade the provisions of this section.

13. By amending § 240.14d–1 as follows:

a. By redesignating paragraphs (c), (d), (e), and (f) as paragraphs (e), (f), (g) and (h);

b. Removing the reference to ''§ 240.14d–1(c)'' in newly redesignated paragraph (f) and adding in its place ''§ 240.14d–1(e); and

c. Adding new paragraphs (c) and (d) and Instructions thereto to read as follows:

§ 240.14d-1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(c) *Tier I.* Any tender offer for the securities of a foreign private issuer as defined in § 240.3b–4 is exempt from the requirements of sections 14(d)(1) through 14(d)(7) of the Act (15 U.S.C. 78n(d)(1) through 78n(d)(7)), Regulation 14D (§ 240.14d–1 through § 240.14d–10) and Schedules TO (§ 240.14d–100) and 14D–9 (§ 240.14d-101) thereunder, and § 240.14e–1 and § 240.14e–2 of Regulation 14E under the Act if the following conditions are satisfied:

(1) *U.S. ownership limitation.* Except in the case of a tender offer which is

commenced during the pendency of a tender offer made by a prior bidder in reliance on this paragraph or § 240.13e-4(h)(8), U.S. holders do not hold more than 10 percent of the class of securities sought in the offer (as determined under Instruction 2 to paragraphs (c) and (d) of this section).

(2) *Equal treatment.* The bidder must permit U.S. holders to participate in the offer on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offer; however:

(i) *Registered exchange offers.* If the bidder offers securities registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the bidder need not extend the offer to security holders in those states or jurisdictions that prohibit the offer or sale of the securities after the bidder has made a good faith effort to register or qualify the offer and sale of securities in that state or jurisdiction, except that the bidder must offer the same cash alternative to security holders in any such state or jurisdiction that it has offered to security holders in any other state or jurisdiction.

(ii) *Exempt exchange offers.* If the bidder offers securities exempt from registration under § 230.802 of this chapter, the bidder need not extend the offer to security holders in those states or jurisdictions that require registration or qualification, except that the bidder must offer the same cash alternative to security holders in any such state or jurisdiction that it has offered to security holders in any other state or jurisdiction.

(iii) *Cash only consideration.* The bidder may offer U.S. holders only a cash consideration for the tender of the subject securities, notwithstanding the fact that the bidder is offering security holders outside the United States a consideration that consists in whole or in part of securities of the bidder, so long as the bidder has a reasonable basis for believing that the amount of cash is substantially equivalent to the value of the consideration offered to non-U.S. holders, and either of the following conditions are satisfied:

(A) The offered security is a ''margin security'' within the meaning of Regulation T (12 CFR 220.2) and the issuer undertakes to provide, upon the request of any U.S. holder or the Commission staff, the closing price and daily trading volume of the security on the principal trading market for the security as of the last trading day of each of the six months preceding the announcement of the offer and each of the trading days thereafter; or

(B) If the offered security is not a ''margin security'' within the meaning of Regulation T (12 CFR 220.2) the issuer undertakes to provide, upon the request of any U.S. holder or the Commission staff, an opinion of an independent expert stating that the cash consideration offered to U.S. holders is substantially equivalent to the value of the consideration offered security holders outside the United States.

(iv) *Disparate tax treatment.* If the bidder offers loan notes solely to offer sellers tax advantages not available in the United States and these notes are neither listed on any organized securities market nor registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the loan notes need not be offered to U.S. holders.

(3) *Informational documents.* (i) The bidder must disseminate any informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the home jurisdiction.

(ii) If the bidder disseminates by publication in its home jurisdiction, the bidder must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

(iii) In the case of tender offers for securities described in section 14(d)(1) of the Act (15 U.S.C. 78n(d)(1)), if the bidder publishes or otherwise disseminates an informational document to the holders of the securities in connection with the tender offer, the bidder must furnish that informational document, including any amendments thereto, in English, to the Commission on Form CB (§ 249.480 of this chapter) by the first business day after publication or dissemination. If the bidder is a foreign company, it must also file a Form F–X (§ 239.42 of this chapter) with the Commission at the same time as the submission of Form CB to appoint an agent for service in the United States.

(4) *Investment companies.* The issuer of the securities that are the subject of the tender offer is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

(d) *Tier II.* A person conducting a tender offer (including any exchange offer) that meets the conditions in paragraph (d)(1) of this section shall be entitled to the exemptive relief specified in paragraph (d)(2) of this section provided that such tender offer complies with all the requirements of this section other than those for which an exemption has been specifically provided in paragraph (d)(2) of this section:

(1) *Conditions.* (i) The subject company is a foreign private issuer as defined in § 240.3b–4 and is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company;

(ii) Except in the case of a tender offer which is commenced during the pendency of a tender offer made by a prior bidder in reliance on this paragraph or § 240.13e–4(i), U.S. holders do not hold more than 40 percent of the class of securities sought in the offer (as determined under Instruction 2 to paragraphs (c) and (d) of this section); and

(iii) The bidder complies with all applicable U.S. tender offer laws and regulations, other than those for which an exemption has been provided for in paragraph (d)(2) of this section.

(2) *Exemptions.*—(i) *Equal treatment—loan notes.* If the bidder offers loan notes solely to offer sellers tax advantages not available in the United States and these notes are neither listed on any organized securities market nor registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the loan notes need not be offered to U.S. holders, notwithstanding § 240.14d–10.

(ii) *Equal treatment—separate U.S. and foreign offers.* Notwithstanding the provisions of § 240.14d–10, a bidder conducting a tender offer meeting the conditions of paragraph (d)(1) of this section may separate the offer into two offers: one offer made only to U.S. holders and another offer made only to non-U.S. holders. The offer to U.S. holders must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offers.

(iii) *Notice of extensions.* Notice of extensions made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of § 240.14e–1(d).

(iv) *Prompt payment.* Payment made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of § 240.14e–1(c).

(v) *Subsequent offering period/ Withdrawal rights.* A bidder will satisfy the announcement and prompt payment requirements of § 240.14d–11(d), if the bidder announces the results of the tender offer, including the approximate number of securities deposited to date, and pays for tendered securities in accordance with the requirements of the

home jurisdiction law or practice and the subsequent offering period commences immediately following such announcement. Notwithstanding section 14(d)(5) of the Act (15 U.S.C. 78n(d)(5)), the bidder need not extend withdrawal rights following the close of the offer and prior to the commencement of the subsequent offering period.

Instructions to paragraphs (c) and (d):

1. *Home jurisdiction* means both the jurisdiction of the subject company's incorporation, organization or chartering and the principal foreign market where the subject company's securities are listed or quoted.

2. *U.S. holder* means any security holder resident in the United States. Except as otherwise provided in Instruction 3 below, to determine the percentage of outstanding securities held by U.S. holders:

i. Calculate the U.S. ownership as of 30 days before the commencement of the tender offer;

ii. Include securities underlying American Depositary Shares convertible or exchangeable into the securities that are the subject of the tender offer when calculating the number of subject securities outstanding, as well as the number held by U.S. holders. Exclude from the calculations other types of securities that are convertible or exchangeable into the securities that are the subject of the tender offer, such as warrants, options and convertible securities. Exclude from those calculations securities held by persons who hold more than 10 percent of the subject securities, or that are held by the bidder;

iii. Use the method of calculating record ownership in Rule 12g3–2(a) under the Act (§ 240.12g3–2(a) of this chapter), except that your inquiry as to the amount of securities represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in the United States, the subject company's jurisdiction of incorporation or that of each participant in a business combination, and the jurisdiction that is the primary trading market for the subject securities, if different than the subject company's jurisdiction of incorporation;

iv. If, after reasonable inquiry, you are unable to obtain information about the amount of securities represented by accounts of customers resident in the United States, you may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business; and

v. Count securities as beneficially owned by residents of the United States as reported on reports of beneficial ownership that are provided to you or publicly filed and based on information otherwise provided to you.

3. In a tender offer by a bidder other than an affiliate of the issuer of the subject securities, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold 10 percent or less (40 percent or less in the case of 14d–1(d)) of such outstanding securities, unless:

i. The tender offer is made pursuant to an agreement with the issuer of the subject securities;

ii. The aggregate trading volume of the subject class of securities on all national securities exchanges in the United States, on the Nasdaq market, or on the OTC market, as reported to the NASD, over the 12-calendar-month period ending 30 days before commencement of the offer, exceeds 10 percent (40 percent in the case of 14d–1(d)) of the worldwide aggregate trading volume of that class of securities over the same period;

iii. The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission indicates that U.S. holders hold more than 10 percent (40 percent in the case of 14d–1(d)) of the outstanding subject class of securities; or

iv. The bidder knows or has reason to know that the level of U.S. ownership exceeds 10 percent (40 percent in the case of 14d–1(d)) of such securities.

4. *United States. United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

5. The exemptions provided by paragraphs (c) and (d) of this section are not available for any securities transaction or series of transactions that technically complies with paragraph (c) or (d) of this section but are part of a plan or scheme to evade the provisions of Regulations 14D or 14E.

* * * * *

14. By amending § 240.14d–9 by revising the introductory text of paragraph (d)(2) and adding paragraph (d)(2)(iii) to read as follows:

§ 240.14d–9 Recommendation or solicitation by the subject company and others.

* * * * *

(d) * * *

* * * * *

(2) Notwithstanding paragraph (d)(1) of this section, this section shall not apply to the following persons:

* * * * *

(iii) Any person specified in paragraph (d)(1) of this section if:

(A) The subject company is the subject of a tender offer conducted under § 240.14d–1(c);

(B) Any person specified in paragraph (d)(1) of this section furnishes to the Commission on Form CB (§ 249.480 of this chapter) the entire informational document it publishes or otherwise disseminates to holders of the class of securities in connection with the tender offer no later than the next business day after publication or dissemination;

(C) Any person specified in paragraph (d)(1) of this section disseminates any informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the issuer's home jurisdiction; and

(D) Any person specified in paragraph (d)(1) of this section disseminates by publication in its home jurisdiction, such person must publish the information in the United States in a manner reasonably calculated to inform U.S. security holders of the offer.

* * * * *

15. By amending § 240.14e–2 by adding paragraph (d) to read as follows:

§ 240.14e–2 Position of subject company with respect to a tender offer.

* * * * *

(d) *Exemption for cross-border tender offers.* The subject company shall be exempt from this section with respect to a tender offer conducted under § 240.14d–1(c).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

17. By adding Subpart E, § 249.480 and Form CB to read as follows:

Subpart E—Forms for Statements Made in Connection With Exempt Tender Offers

§ 249.480 Form CB, tender offer statement in connection with a tender offer for a foreign private issuer.

This form is used to report an issuer tender offer conducted in compliance with § 240.13e–4(h)(8) of this chapter and a third-party tender offer conducted in compliance with § 240.14d–1(c) of this chapter. This report also is used by a subject company pursuant to § 240.14e–2(d) of this chapter.

Note: Form CB does not appear in the Code of Federal Regulations. Form CB is attached as Appendix A.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

18. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

19. By adding § 260.4d–10 to read as follows:

§ 260.4d–10 Exemption for securities issued pursuant to § 230.802 of this chapter.

Any debt security, whether or not issued under an indenture, is exempt from the Act if made in compliance with § 230.802 of this chapter.

By the Commission.

Dated: October 22, 1999.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Form CB

Note: Form CB does not appear in the Code of Federal Regulations.

Securities and Exchange Commission

Washington, D.C. 20549

Form CB—Tender Offer/Rights Offering Notification Form

(Amendment No. ____)

Please place an X in the box(es) to designate the appropriate rule provision(s) relied upon to file this Form:

Securities Act Rule 801 (Rights Offering) ☐
Securities Act Rule 802 (Exchange Offer) ☐
Exchange Act Rule 13e–4(h)(8) (Issuer Tender Offer) ☐
Exchange Act Rule 14d–1(c) (Third Party Tender Offer) ☐
Exchange Act Rule 14e–2(d) (Subject Company Response) ☐

(Name of Subject Company)

(Translation of Subject Company's Name into English (if applicable))

(Jurisdiction of Subject Company's Incorporation or Organization)

(Name of Person(s) Furnishing Form)

(Title of Class of Subject Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, Address (including zip code) and Telephone Number (including area code) of Person(s) Authorized to Receive Notices and Communications on Behalf of Subject Company)

(Date Tender Offer/Rights Offering Commenced)

*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. 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. This collection of information has been reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. 3507.

General Instructions

I. Eligibility Requirements for Use of Form CB

A. Use this Form to furnish information pursuant to Rules 13e–4(h)(8), 14d–1(c) and 14e–2(d) under the Securities Exchange Act of 1934 (''Exchange Act''), and Rules 801 and 802 under the Securities Act of 1933 (''Securities Act'').

Instructions

1. For the purposes of this Form, the term ''subject company'' means the issuer of the securities in a rights offering and the company whose securities are sought in a tender offer.

2. For the purposes of this Form, the term ''tender offer'' includes both cash and securities tender offers.

B. The information and documents furnished on this Form are not deemed ''filed'' with the Commission or otherwise subject to the liabilities of Section 18 of the Exchange Act.

II. Instructions for Submitting Form

A. You must furnish five copies of this Form and any amendment to the Form (see Part I, Item 1.(b)), including all exhibits and any other paper or document furnished as part of the Form, to the Commission at its principal office. Each copy must be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding must be made on the side or stitching margin in such manner as to leave the reading matter legible.

B. The persons specified in Part IV may manually sign the original and at least one copy of this Form and any amendments. You must conform any unsigned copies. Typed signatures are acceptable so long as manually signed copies are retained by the filing person for five years.

C. You must furnish this Form to the Commission no later than the next business day after the disclosure documents submitted with this Form are published or otherwise disseminated in the subject company's home jurisdiction.

D. In addition to any internal numbering you may include, sequentially number the manually signed original of the Form and any amendments by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of the document and any exhibits or attachments. Further, you must set forth the total number of pages contained in a numbered original on the first page of the document.

III. Special Instructions for Complying With Form CB

Under Sections 3(b), 7, 8, 10, 19 and 28 of the Securities Act of 1933, and Sections 12, 13, 14, 23 and 36 of the Exchange Act of 1934 and the rules and regulations adopted under those Sections, the Commission is authorized to solicit the information required to be supplied by this form by certain entities conducting a tender offer, rights offer or business combination for the securities of certain issuers.

Disclosure of the information specified in this form is mandatory. We will use the information for the primary purposes of assuring that the offeror is entitled to use the Form and that investors have information about the transaction to enable them to make informed investment decisions. We will make this Form a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes. These purposes include referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions.

Part I—Information Sent to Security Holders

Item 1. Home Jurisdiction Documents

(a) You must attach to this Form the entire disclosure document or documents, including any amendments thereto, in English, that you have delivered to holders of securities or published in the subject company's home jurisdiction that are required to be disseminated to U.S. security holders or published in the United States. The Form need not include any documents incorporated by reference into those disclosure document(s) and not published or distributed to holders of securities.

(b) Furnish any amendment to a furnished document or documents to the Commission under cover of this Form. Indicate on the cover page the number of the amendment.

Item 2. Informational Legends

You may need to include legends on the outside cover page of any offering document(s) used in the transaction. *See* Rules 801(b) and 802(b).

Note to Item 2. If you deliver the home jurisdiction document(s) through an electronic medium, the required legends must be presented in a manner reasonably calculated to draw attention to them.

Part II—Information Not Required To Be Sent to Security Holders

The exhibits specified below must be furnished as part of the Form, but need not be sent to security holders unless sent to security holders in the home jurisdiction. Letter or number all exhibits for convenient reference.

(1) Furnish to the Commission any reports or information (in English or an English summary thereof) that, in accordance with the requirements of the home jurisdiction, must be made publicly available in connection with the transaction but need not be disseminated to security holders.

(2) Furnish copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to this Form under a power of attorney, furnish manually signed copies of the power of attorney.

Part III—Consent to Service of Process

(1) When this Form is furnished to the Commission, the person furnishing this Form (if a non-U.S. person) must also file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(2) Promptly communicate any change in the name or address of an agent for service to the Commission by amendment of the Form F–X.

Part IV—Signatures

(1) Each person (or its authorized representative) on whose behalf the Form is submitted must sign the Form. If a person's authorized representative signs, and the authorized representative is someone other than an executive officer or general partner, provide evidence of the representative's authority with the Form.

(2) Type or print the name and any title of each person who signs the Form beneath his or her signature.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____
(Name and Title) _____
(Date) _____

[FR Doc. 99–28354 Filed 11–9–99; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 230, 232, 239, and 240

[Release No. 33–7760; 34–42055; IC–24107; File No. S7–28–98]

RIN 3235–AG84

Regulation of Takeovers and Security Holder Communications

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules.

SUMMARY: We are adopting comprehensive revisions to the rules and regulations applicable to takeover transactions (including tender offers, mergers, acquisitions and similar extraordinary transactions). The revised rules will permit increased communications with security holders and the markets. The amendments also will: Balance the treatment of cash and stock tender offers; simplify and centralize the disclosure requirements; and eliminate regulatory inconsistencies in mergers and tender offers. In addition, we are updating the tender offer rules by providing for a subsequent offering period, clarifying certain filing and disclosure requirements and reducing compliance burdens where consistent with investor protection. We believe these revisions will lead to a more well informed and efficient market.

EFFECTIVE DATE: The rules and amendments will become effective January 24, 2000.

FOR MORE INFORMATION CONTACT: Dennis O. Garris, Chief, or James J. Moloney, Special Counsel, in the Office of Mergers & Acquisitions, Division of Corporation Finance, at (202) 942–2920. For questions on new Rule 14e–5, contact James A. Brigagliano, Assistant Director, Irene Halpin, Florence Harmon or Michael Trocchio, Special Counsels, in the Office of Risk Management and Control, Division of Market Regulation, at (202) 942–0772. For questions on investment companies, contact Martha B. Peterson, Special Counsel, in the Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0721.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rules 13e–1, 13e–3, 13e–4, 14a–4, 14a–6, 14a–12, 14c–5, 14d–1, 14d–2, 14d–3, 14d–4, 14d–5, 14d–6, 14d–7, 14d–9, 14e–1[1] and Schedules 14A, 13E–3, and 14D–9[2] under the Securities Exchange Act of 1934 (''Exchange Act'').[3] We are rescinding Exchange Act Rule 14a–11.[4] We are adopting: amendments to Item 10 of Regulation S–K;[5] a new subpart of Regulation S–K, the 1000 series (''Regulation M–A''); a new tender offer schedule, Schedule TO, to replace Schedules 13E–4 and 14D–1;[6] new tender offer Rule 14e–5 to replace Rule 10b–13;[7] and new tender offer Rules 14d–11 and 14e–8. We also are adopting amendments to Rule 13(d) of Regulation S–T and Rule of Practice 30–3.[8] Lastly, we are adopting amendments to Rules 135, 145 and 432, Forms S–4 and F–4, and new Rules 162, 165, 166 and 425 under the Securities Act of 1933 (''Securities Act'').[9]

Table of Contents

[1] 17 CFR 240.13e–1, 13e–3, 13e–4, 14a–4, 14a–6, 14a–12, 14c–5,14d–1, 14d–2, 14d–3, 14d–4, 14d–5, 14d–6, 14d–7, 14d–9, and 14e–1.

[2] 17 CFR 240.14a–101, 13e–100, and 14d–101.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.14a–11.

[5] 17 CFR 229.10.

[6] 17 CFR 240.13e–101, 14d–100.

[7] 17 CFR 240.10b–13.

[8] 17 CFR 232.13(d); 17 CFR 200.30–3.

[9] 17 CFR 230.135, 145, and 432; 17 CFR 239.25 and 34; 15 U.S.C. 77a *et seq.*

I. Executive Summary and Background

Last fall, we proposed comprehensive changes to the various regulatory schemes applicable to issuer and third-party tender offers, mergers, going-private transactions and security holder communications.[10] The proposed changes were prompted by an increase in the number of transactions where securities are offered as consideration; an increase in the number of hostile transactions involving proxy or consent solicitations; and significant technological advances that have resulted in more and faster communications with security holders and the markets. Because these trends have continued since we issued the Proposing Release and commenters, for the most part, viewed the proposals as favorable,[11] we are adopting the proposals, with some modification.

As we noted in the Proposing Release, the existing regulatory framework imposes a number of restrictions on communications with security holders and the marketplace. In addition, the disparate regulatory treatment of cash and stock tender offers [12] may unduly influence a bidder's [13] choice of offering cash or securities in a takeover transaction. We also noted unnecessary differences in regulatory requirements between tender offers and other types of extraordinary transactions, such as mergers.[14] Finally, we noted that the multiple regulatory schemes that can apply to a transaction may impose additional compliance costs without necessarily providing a sufficient marginal benefit to security holders. Our goals in proposing and adopting these changes are to promote communications with security holders and the markets, minimize selective disclosure, harmonize inconsistent disclosure requirements and alleviate unnecessary burdens associated with the compliance process, without a reduction in investor protection.[15]

We also proposed broad changes to the regulation of securities offerings in a companion release.[16] Our proposed treatment of communications in the Securities Act Reform Release differs from our approach in the Proposing Release. The differences were due to the special nature of business combination transactions [17] in contrast to capital-raising transactions. At this time we are not adopting the Securities Act Reform proposals that are unrelated to business combination transactions. We are continuing to evaluate commenters' responses to the Securities Act Reform proposals and in the future we may take action on these proposals. We are adopting, however, several proposals in the Securities Act Reform Release that relate to business combination transactions. As a result, some proposals or concepts previously presented in the Securities Act Reform Release are incorporated into this release. Where we proposed changes that would appear in new forms included in the Securities Act Reform Release (Forms C and SB–3), those changes have been implemented in existing forms (Forms S–4 and F–4). In a separate release, we also are adopting significant changes to the regulatory scheme for cross-border tender offers, exchange offers and rights offerings.[18]

We believe these new rules and revisions should provide participants in the securities markets sufficient flexibility to accommodate changes in deal structure and advances in technology that continue to occur in today's markets. Briefly, the new rules and amendments adopted today will:

- Relax existing restrictions on oral and written communications with security holders by permitting the dissemination of more information on a timely basis, so long as the written communications are filed on the date of first use; in particular,
- Permit more communications before the filing of a registration statement in connection with either a stock tender offer or a stock merger transaction;
- Permit more communications before the filing of a proxy statement (whether or not a business combination transaction is involved);
- Permit more communications regarding a proposed tender offer without ''commencing'' the offer and requiring the filing and dissemination of specified information;
- Harmonize the various communications principles applicable to business combinations under the Securities Act, tender offer rules and proxy rules; and
- Eliminate the confidential treatment currently available for merger proxy statements, except when communications made outside the proxy statement are limited to those specified in Rule 135;
- Balance the treatment of stock and cash tender offers by permitting both issuer and third-party stock tender offers to commence as early as the filing of a registration statement;
- Simplify and integrate the various disclosure requirements for tender offers, going-private transactions, and other extraordinary transactions in a new series of rules within Regulation S–K, called ''Regulation M–A'';
- Combine the existing schedules for issuer and third-party tender offers into one schedule available for all tender offers, entitled ''Schedule TO'';
- Require a ''plain English'' summary term sheet in all tender offers, mergers and going-private transactions, except when the transaction is already subject to the Securities Act plain English rules;
- Update the financial statement requirements for takeover transactions; in particular,
- Eliminate the requirement to file financial statements for target companies [19] in most cash mergers, consistent with the treatment of cash tender offers;
- Clarify when financial statements of the acquiring company are not required in cash mergers, and when financial statements are required, reduce the financial statements for the acquiror from three years to two;
- Clarify when the bidder's financial statements are not required in cash tender offers, and when financial statements are required in third-party offers, reduce the requirement from three years to two;
- Require pro forma and related financial information in negotiated cash tender offers where the bidder intends to engage in a back-end securities transaction;

[10] Regulation of Takeovers and Security Holder Communications, Release No. 33–7607 (November 3, 1998) (63 FR 67331) (the ''Proposing Release'').

[11] The comment letters are available for inspection and copying in our Public Reference Room in File No. S7–28–98. Comments that were submitted electronically also are available on our web site (www.sec.gov).

[12] Stock tender offers, also referred to as exchange offers, are tender offers where the consideration offered to security holders includes securities (either equity or debt); these transactions generally are registered under the Securities Act.

[13] The term ''bidder'' is used throughout this release to refer to the offeror or purchaser in a tender offer.

[14] For a discussion of the regulatory schemes applicable to cash tender offers, exchange offers, cash and stock mergers, *see* Part II.A of the Proposing Release.

[15] In this release we focus on the amendments that we are adopting and how they differ from the original proposals. For a more complete discussion of the background and rationale for the changes, *see* the Proposing Release.

[16] Securities Act Reform Release, Release No. 33–7606A (November 13,1998) (63 FR 67174).

[17] For purposes of this release, the Proposing Release and the rules adopted in this release, a ''business combination transaction'' means any Rule 145(a) transaction (17 CFR 230.145(a)) (including mergers, recapitalizations, acquisitions, and similar matters) or tender offer (including issuer tender offers).

[18] Release No. 33–7759 (October 22, 1999) (the ''Cross-Border Adopting Release'').

[19] The term ''target'' is used throughout this release to refer to the company to be acquired in a business combination transaction or the company whose securities are the subject of the transaction, whether the transaction is agreed upon or unsolicited.

• Reduce the financial statements required for non-reporting target companies in stock mergers and stock tender offers;

• Permit an optional subsequent offering period after completion of a tender offer, during which security holders can tender shares without withdrawal rights;

• Clarify Rule 13e–1, which requires issuers to report intended repurchases of their own securities once a third-party tender offer has commenced;

• Conform the security holder list requirement in the tender offer rules with the comparable provision in the proxy rules so that the list will include non-objecting beneficial owners; and * clarify the rule that prohibits purchases outside a tender offer (Rule 10b–13), codify prior interpretations of and exemptions from the rule, and redesignate it as Rule 14e–5.

In several respects the rules adopted today differ from the proposed rule changes. The primary differences are as follows:

• The Securities Act exemption for communications is extended to all parties to the transaction and any persons acting on their behalf;

• The Securities Act exemption also is revised to clarify that an unintentional or immaterial breach of the filing requirement will not result in a loss of the exemption so long as a good faith and reasonable attempt was made to file and the material is filed as soon as practicable after discovery of the failure to file;

• A definition of ''public announcement'' is provided so that parties know when they need to begin filing written communications relating to the transaction and when the prohibition against making purchases outside the tender offer begins;

• A written communication relating to a proposed transaction that is a Rule 135 notice must be filed unless the notice only contains information that has already been filed;

• The confidential treatment currently available for preliminary merger proxy statements is retained under limited circumstances;

• The requirement in expanded Rule 14a–12 to furnish a proxy statement as soon as practicable is revised so that a proxy statement must be furnished at the time a form of proxy is given to or requested from security holders;

• Written communications permitted under expanded Rule 14a–12 must include either full participant information, as currently required, or a legend directing security holders where they can obtain participant information;

• Long form publication is retained as a means to commence a tender offer, rather than being eliminated as proposed;

• The provision permitting commencement of exchange offers as early as the filing of a registration statement is extended to issuer exchange offers, not limited to third-party offers as proposed;

• A bidder that commences an exchange offer early may not be required to deliver a final prospectus to security holders;

• An acquiror in a stock merger or stock tender offer need not provide any financial statements for a non-reporting target if the acquiror's security holders are not voting on the transaction and the acquisition is not significant to the acquiror at the 20% level;

• Subsequent offering period changes: this period can be between three and 20 business days, and is not fixed at ten business days as initially proposed; a bidder is not required to disclose an intent to engage in a back-end merger; and a bidder must announce the results of the initial offering period before beginning the subsequent offering period;

• A bidder must disclose pro forma financial information in the first tier of a two-tier transaction for negotiated transactions only, not for transactions where access to the target's financial information is limited;

• The information required by Rule 13e–1 regarding issuer repurchases of securities need not be disseminated to security holders; in addition, an exclusion from this rule is provided for certain periodic, routine repurchases; and

• Several additional exceptions are added to new Rule 14e–5.

At this time we are not adopting several concepts that we solicited comment on, including:

• A modification to the proxy rules that would permit the direct delivery of proxy materials to non-objecting beneficial owners;

• A federally-mandated proxy solicitation period;

• A ''test the waters'' provision for proxy solicitations;

• A requirement that bidders commencing a tender offer by summary advertisement mail their tender offer materials to security holders;

• A proxy analogue to the early commencement provision in exchange offers that would permit the sending of proxy cards with ''preliminary'' proxy materials; and

• An expansion of the Private Securities Litigation Reform Act of 1995[20] safe harbor from liability to cover forward-looking statements made in connection with tender offers.

In the future, depending on the effects of today's rule changes, we may consider proposing additional changes to further harmonize the regulatory requirements.

II. Discussion of New Regulatory Scheme

A. Overview

1. Increased Communications Permitted Before Filing Disclosure Document

Today, merger and acquisition transactions are occurring at a faster pace, due in part to the rapid development of new technologies and advancements in communications. As a result of economic and regulatory pressures, many companies are releasing more information to the market before a registration, proxy or tender offer statement is filed publicly with us.[21] In many cases, parties are releasing information on proposed transactions including pro forma financial information for the combined entity, estimated cost savings and synergies. As we noted in the Proposing Release, parties to business combination transactions provide several reasons for the need to disclose information early,[22] including the duty under Rule 10b–5 to disclose material information in a manner that is not misleading.[23] We also recognize that parties may be subject to other regulatory requirements to disclose information to the markets early.[24]

Existing restrictions on communications result primarily from the broad concepts of ''offer'' [25] and ''prospectus'' [26] under the Securities Act, ''solicitation'' [27] under the Exchange Act proxy rules, and ''commencement'' [28] under the Williams

[20] Pub. L. 104–67, 109 Stat. 737 (1995).

[21] Companies may disclose information in response to the market's demand for information regarding proposed transactions and the need to keep customers, employees and other constituencies adequately informed.

[22] *See* Part II.B.1 of the Proposing Release.

[23] 17 CFR 240.10b–5. We have long recognized the needs of issuers to communicate with security holders regarding important business and financial developments. *See* Releases No. 33–4697 (May 28, 1964) (29 FR 7317) and 33–5180 (August 16, 1971) (36 FR 16506). In addition, the Division of Corporation Finance has previously recognized the needs of bidders to disclose information regarding a contemplated ''back-end'' transaction (*i.e.*, a subsequent transaction in which the bidder acquires any remaining securities outstanding). Disclosure of information required by Schedule 14D–1 regarding a ''back-end'' transaction generally will not result in ''gun jumping'' because the information is not designed to prime the market for a subsequent registered offering of securities. Instead, the information aids investors in evaluating the terms of a tender offer and deciding whether to tender for cash or wait for securities in a back-end transaction. *See* Release No. 33–5927 (April 24, 1978) (42 FR 18163).

[24] Companies may be required to disclose information under the particular rules of the stock exchange or inter-dealer quotation system upon which their securities are traded.

[25] Section 2(a)(3) of the Securities Act (15 U.S.C. 77b) broadly defines ''offer'' as including every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. Offers are currently prohibited during the pre-filing period and restricted during the waiting period.

[26] The term ''prospectus'' is defined in section 2(a)(10) (15 U.S.C. 77b) to include any prospectus, notice, circular, advertisement, letter of communication, written or by radio or television, that offers any security for sale or confirms the sale of the security, except for communications that are preceded or accompanied by a statutory prospectus.

[27] ''Solicitation'' is broadly defined to include ''the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.'' *See* Rule 14a–1(*l*) (17 CFR 240.14a–1(*l*)).

[28] The Williams Act provides that only very limited information can be announced without either commencing a cash tender offer or requiring the filing of a registration statement in a stock offer.

Act tender offer rules.[29] We recognize that restricting communications to one document may actually impede, rather than promote, informed investing and voting decisions.

We are adopting, as proposed, non-exclusive exemptions under the Securities Act, proxy rules and tender offer rules that permit communications for an unrestricted length of time without a cooling-off period between the end of communications and filing. Written communications made in reliance on the exemptions must be filed. In response to comments, we have modified the exemptions slightly from those proposed, as discussed below.

One major benefit of permitting earlier communications is that more information will be available generally to all security holders, not simply to a limited audience of analysts and financially sophisticated market participants. Because the new rules do not require oral communications to be reduced to writing and filed, some selective disclosure may continue to occur.[30] Nevertheless, the rules adopted today are designed to reduce selective disclosure by permitting widespread dissemination of information through a variety of media calculated to inform all security holders about the terms, benefits and risks of a planned extraordinary transaction. We believe that parties to business combination transactions generally wish to inform the marketplace at large about their deals, and will use the new rules to accomplish this end. The new regulatory scheme is not intended to be used as a means to substitute selective oral disclosure for written and oral disclosure that becomes public on a widespread basis.[31] Although this release does not impose new requirements on oral communications, we remain extremely troubled by the selective disclosure of material information.[32] The staff is considering broader regulatory approaches to limit or inhibit written and oral selective disclosure by issuers in all contexts, including those addressed in this release. If we decide to pursue these approaches, we will issue a separate release seeking public comment.[33]

The scheme we adopt today provides the maximum amount of flexibility to disclose information to security holders and the markets.[34] This new communications scheme, however, does not change the current requirement that security holders receive a mandated disclosure document before they are asked to make a voting or investment decision (*e.g.*, a prospectus, proxy statement, or tender offer statement setting forth complete and balanced information).[35] Of course, security holders may buy or sell in the market before they receive the mandated disclosure document. That is true under the current regulatory scheme as well as under the new one. Under the new rules, security holders are likely to have information about the transaction at an earlier point in time, and they can choose to act on this information or wait for the complete disclosure document.

While it is possible under the new scheme to announce a proposed transaction long before a mandated disclosure document is filed, we do not believe acquirors will delay the filing of a mandated disclosure document unnecessarily because the longer they wait the greater the risk that market forces will affect the terms of the deal or another potential acquiror will announce a competing transaction. We believe that companies announcing a transaction should, and we encourage them to, file the mandated disclosure document as soon as possible after announcing a proposed transaction.

Our long-held concern regarding communications that could condition the market before dissemination of a mandated disclosure document is mitigated by the continuing requirement to deliver a disclosure document before any voting or investment decision can be made, and the attendant liability for false or misleading statements. Communications made in reliance on the new exemptions would, of course, be subject to section 10(b) liability.[36] We remind persons relying on the exemptions that fraudulent statements in these communications could not be cured by subsequent filings. In light of these considerations, we believe that the benefits conferred on the marketplace by the disclosure of more information on a timely basis outweigh the risks that the information will be incomplete or potentially misleading.

2. Eligibility

Our proposals did not make distinctions based on size and seasoned status. Due to the extraordinary nature of business combination transactions, security holders and the markets need full and timely information regarding those transactions regardless of the size or seasoned status of the companies involved. We recognized the inherent difficulties in selecting the appropriate focus for purposes of applying an eligibility test (*i.e.*, should you look at the status of the acquiror, the target or the combined entity?). All commenters who addressed the issue agreed with our view. Therefore, the exemptions are adopted as proposed, without any eligibility requirements.

We also asked whether the exemptions should be limited to the parties to the transaction or available to others who may be acting on behalf of the parties to the transaction. In particular, we noted that in a third-party stock offer the company to be acquired would not ordinarily be subject to the Securities Act restrictions on communications, but under certain circumstances, it could be viewed as joining with the acquiror in making the offer. In that case, the exemptions would need to extend to additional parties. In addition, we asked whether the parties' affiliates, dealer-managers,

See Rule 14d–2(c) and (d) (17 CFR 240.14d–2(c) and (d)).

[29] The Williams Act was enacted in 1968 as an amendment to the Exchange Act (sections 13(d)–(e) and 14(d)–(f)). The Williams Act regulates tender offers and imposes beneficial ownership reporting requirements. 15 U.S.C. 78m(d)–(e) and 15 U.S.C. 78n(d)–(f).

[30] Our exemptions permitting earlier communications do not in any way alter the liability traditionally imposed on insider trading. *See* Rules 10b–5 and 14e–3 (17 CFR 240.14e–3). Rule 14e–3 applies when a person ''has taken a substantial step or steps to commence, or has commenced, a tender offer,'' so the timing of this rule is not affected by the new regulatory scheme.

[31] The new rules only provide an exemption from section 5 (and comparable restrictions on communications under the proxy and tender offer rules). Oral communications under the new rules, like written communications, will have liability under the applicable regulatory scheme. *See* Part II.B.2 below.

[32] Chairman Levitt has expressed concerns about the selective disclosure of material information to analysts and institutional investors. *See* ''A Question of Integrity: Promoting Investor Confidence by Fighting Insider Trading,'' speech given Feb. 27, 1998, available on our web site (www.sec.gov).

[33] *See* ''Quality Information: The Lifeblood of Our Markets'' speech given by Chairman Levitt on Oct. 18, 1999, available on our web site (www.sec.gov). ''The behind-the-scenes feeding of material non-public information from companies to analysts is a stain on our markets. This selectiveness is a disservice to investors and it undermines the fundamental principle of fairness. In a time when instantaneous and free flowing information is the norm, these sort of whispers are an insult to fair and public disclosure * * *. (T)he Commission is planning to take action where it can. Within the next few months, we will consider proposing rules to close the gap between those in the so-called 'know' and the rest of us in the public.''

[34] We solicited comment on two alternatives to our primary communications proposal that were not favored by commenters and are not being adopted.

[35] The exemptions also apply to communications made after the mandated disclosure document is filed, so long as written communications are filed. They do not, however, alter the disclosure, filing and delivery requirements for the mandated disclosure documents.

[36] 15 U.S.C. 78j(b). The communications permitted under the exemptions adopted would be subject to liability under the particular regulatory scheme (the Securities Act, proxy or tender offer rules) as well as Rule 10b–5 and the other antifraud rules.

and others acting on behalf of the parties to the transaction should be permitted to rely on the exemption. Again, most commenters were consistent in recommending that we expand the exemptions to these persons. While we realize that in many circumstances the exemptions would not be necessary for persons other than the parties to the transaction or the party making the offer, we want to encourage full, complete and continuous communications with security holders. Therefore, we are adopting the exemptions to cover all persons acting on the parties' behalf.

3. Written Communications With Legend Filed on Date of First Use

We are adopting, as proposed, a condition to the communications exemptions that all written communications in connection with or relating to a business combination transaction be filed on or before the date of first use.[37] In addition, all written communications must include a prominent legend advising investors to read the registration, proxy or tender offer statement, as applicable.[38] We believe that a prompt filing requirement is necessary to protect security holders and assure that these communications are available to all investors on a timely basis.[39] In most cases, this information will need to be filed electronically via the EDGAR System, and thus will be rapidly disseminated to the marketplace.[40]

In the Proposing Release, we asked whether parties relying on the exemptions should be permitted to file written communications on a later date (*e.g.*, when the mandated disclosure document is filed or some other date). While several commenters viewed the requirement as reasonable, a few believed it would be burdensome. The latter group of commenters stated that a same-day filing requirement could cause parties to delay the release of information. These commenters believed that communications that would otherwise be made late in the day will be postponed until the materials can be filed on the same day. We believe, however, that in most cases parties to business combination transactions will be able to time their communications so that it is possible to file them on the same day they are made. Also, Rule 13(d) of Regulation S–T permits communications that are made outside of the Commission's business hours to be filed electronically as soon as practicable on the next business day.[41] Further, we have clarified that an immaterial or unintentional delay in filing will not preclude reliance on the Securities Act exemption.[42]

The filing requirement applies to written communications that are made public or are otherwise provided to persons that are not a party to the transaction.[43] As a general matter, this would include, for example, scripts used by parties to the transaction to communicate information to the public and other written material (*e.g.*, slides) relating to the transaction that is shown to investors.[44] In contrast, internal written communications provided solely to parties to the transaction, legal counsel, financial advisors, and similar persons authorized to act on behalf of the parties to the transaction would not need to be filed. Also, as explained in the Proposing Release, business information that is factual in nature and relates solely to ordinary business matters, and not the pending transaction, would not need to be filed. We expect that filing persons will apply traditional legal principles in determining whether a particular written communication is made in connection with or relates to a proposed business combination transaction.[45]

Several commenters criticized the proposed filing requirement because it could result in the filing of duplicative or substantially similar information when similar communications are made over time. In response to this concern, we are clarifying that any republication or redissemination of the same information would not need to be filed again to comply with the exemptions. If, however, information is either added to or changed from the content of an earlier communication, then the revised written communication must be filed.[46]

B. Communications Under the Securities Act

1. Securities Act Exemption and Filing Rules

We are exercising our exemptive authority to create an exemption that will permit more communications with security holders and the markets regarding a planned business combination transaction.[47] We find that free communications relating to business combination transactions are in the public interest and consistent with the protection of investors. Accordingly, we adopt new Rules 165, 166[48] and 425[49] and amend Rules 135 and 145.[50] These new and amended

[37] Written communications include all information disseminated otherwise than orally, including electronic communications and other future applications of changing technology. Videos and CD–ROMs, for example, should be filed on EDGAR by means of a transcript. *See* Rule 304 of Regulation S–T (17 CFR 232.304).

[38] The legend also would advise investors that they can obtain copies of the filed documents for free at the Commission's web site and explain which documents are available for free from the issuer or filing person, as applicable. *See* new Rule 165(c)(1) and revised Rules 14a–12(a)(1)(ii), 13e–4(c), 14d–2(b)(2), and 14d–9(a).

[39] We did not propose, and are not adopting, a requirement to deliver written communications to security holders.

[40] These communications must be filed on EDGAR to the same extent that the related prospectus, proxy statement or tender offer statement must be filed on EDGAR.

[41] 17 CFR 232.13(d). *See* Part II.C.3 below.

[42] *See* Part II.B.2 below.

[43] Oral communications are covered by the exemptions, but they do not need to be reduced to writing or filed. Oral communications, as proposed, will be subject to liability under the applicable regulatory scheme. For example, pre-filing oral communications regarding a proposed offering of securities in connection with a business combination transaction will be subject to section 12(a)(2) liability. *See* Part II.B.2 below.

[44] *Cf.* Rule 14a–6(c) (17 CFR 240.14a–6(c)) and Item 1016(g) of Regulation M–A.

[45] At this time we are not adopting proposed Rules 168 and 169, the exemptions for regularly released forward-looking information and factual business communications from the filing requirements. *See* Part VII.A.1.c.ii.(A) and (B) of the Securities Act Reform Release and Release No. 33–5009 (Oct. 7, 1969) (34 FR 16870). Although we are not adopting these rules, we do not expect parties to file ordinary or routine business communications that refer to the transaction in a non-substantive way.

[46] If the same written communication is redisseminated or contains only minimal changes (*e.g.*, correction of minor typographical errors, an update regarding a contact person, or stylistic changes including a change in the format, type-size, letterhead, addressee, etc.) without any change to the content of the information, the written communication would not need to be refiled. In addition, we do not expect persons to file responses to specific unsolicited inquiries if the responses are not disseminated to others. Of course, if a response to an unsolicited inquiry contained material information not otherwise available to the investing public (*e.g.*, projections), the communication would need to be filed.

[47] Section 28 of the Securities Act (15 U.S.C. 77z–3) gives us authority to, by rule or regulation, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of this title or any rule or regulation issued under this title to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with protection of investors.

[48] We adopt proposed Securities Act Rules 165, 166 and 167 as new Rules 165(b), 165(a) and 166, respectively. These rules are limited to business combination transactions since the Securities Act Reform Release proposals governing capital-raising transactions are not being adopted at this time.

[49] In the Securities Act Reform Release, we proposed a requirement that all ''free writing'' materials be filed as prospectus supplements in accordance with Rule 425. In this release, we adopt proposed Rule 425(b) and (c) as new Rule 425(a) and (b) and limit the rule to business combination transactions. Proposed paragraph (a) contained several exceptions from the filing requirement. We retain the exceptions that are still applicable in Rule 425(d).

[50] *See* Part II.B.3 below discussing revised Rules 135 and 145 in greater detail.

rules permit parties to communicate freely about a planned business combination transaction before a registration statement is filed, as well as during the waiting period and post-effective periods, so long as their written communications used in connection with or relating to the transaction are filed beginning with the first public announcement [51] and ending with the close of the proposed transaction.[52] As noted in the Proposing Release, these communications are not excluded from the definition of ''offer'' in the Securities Act,[53] as no content restriction is imposed on the communications.[54] Instead, new Rule 165 exempts persons making these communications from sections 5(b)(1) and (c) of the Securities Act.[55]

New Rules 165 and 166 are available only for business combination transactions. New Rule 165 defines a business combination transaction as a transaction specified in Rule 145(a) or an exchange offer. Thus, either the proxy rules or the tender offer rules must be applicable to the transaction. We have added a preliminary note to Rules 165 and 166 to state that the exemption is not available to communications that may technically comply with the rule, but have the primary purpose or effect of conditioning the market for a capital-raising or resale transaction.[56]

2. Liability for Communications

As proposed, both oral and written communications made in reliance on the Securities Act exemption would be offers subject to section 12(a)(2) liability, based on the belief that this level of liability would adequately protect investors without chilling communications.[57] Approximately half the commenters who addressed the issue agreed with the proposed liability standard, while the others believed that this potential level of liability could have a chilling effect on communications.

We are adopting the proposed regulatory scheme. To the extent that these communications constitute offers, they currently would be subject to section 12(a)(2) liability. As a result, we do not believe that the adopted rules alter the current liability levels for these communications.[58] In light of the extensive pre-filing communications that are ongoing in the marketplace now with respect to business combination transactions, we believe that a section 12(a)(2) standard of liability would not significantly chill communications.

Several commenters also indicated that the proposed section 5(c) exemption should not be conditioned on timely filing of all written communications. Commenters were concerned that a failure to timely file a written communication could result in a loss of protection under the exemption, resulting in a section 5 violation that would give security holders a right of rescission. In proposing the filing requirement, we did not intend to provide security holders with an automatic right of rescission if a communication is either filed late or there is an unintentional failure to file. To clarify this issue, we are revising the filing requirement in new Rule 165 to state that an immaterial or unintentional failure to file or delay in filing will not result in a loss of the exemption from section 5(b)(1) or (c), so long as a good faith and reasonable attempt to file the written communication is made and the communication is filed as soon as practicable after discovery of the failure to file.[59]

3. Rules 135 and 145

Currently, Rule 135 provides that disclosure of certain limited information in notice form will not be deemed an ''offer'' for purposes of section 5 of the Securities Act.[60] A Rule 135 notice is typically made upon announcement of a proposed securities offering before a registration statement is filed.[61] Rule 145(b)(1) contains a similar provision regarding the information in a stock merger that will not be deemed a ''prospectus'' or ''offer.'' [62]

We proposed several revisions to Rules 135 and 145 in the Proposing Release and the Securities Act Reform Release. In particular, we proposed moving the substance of Rule 145(b)(1) to Rule 135, as both rules contain similar provisions regarding the

[51] *See* Part II.B.4 below for the definition of public announcement.

[52] *See* Part II.A.3 above discussing the types of written communications that must be filed. Written communications relating to the transaction before the filing of a registration statement are prospectuses that must be filed under Rule 425. *See* new Rule 165(a). After a registration statement is filed (during what is called the ''waiting period''), and after effectiveness of the registration statement, written communications relating to the transaction are prospectuses that must be filed under Rule 425. *See* new Rule 165(b). Communications filed under Rule 425 do not need to be delivered to security holders. This does not, however, change the prospectus delivery requirements for the mandated prospectus that is part of the registration statement, and any supplements either before or after the registration statement is declared effective. These prospectuses and supplements would continue to be delivered to security holders and filed under Rule 424 (17 CFR 230.424) instead of Rule 425.

[53] A communication that contains no more information than that specified in Rule 135 will not be an offer, as is currently the case.

[54] We note, however, that a communication relating to an investment company that is permitted by the new and amended rules generally would have omitted to state a fact necessary in order to make the statements in the communication not materially misleading unless the communication includes the information specified in Rule 34b–1 (17 CFR 270.34b–1) under the Investment Company Act of 1940 (17 U.S.C. 80a–1 *et seq.*)

[55] New Rule 166 provides that communications before the first public announcement of a transaction will not be offers, so long as parties to the transaction take reasonable steps to prevent further distribution or publication until the first public announcement or the registration statement is filed.

[56] For example, the exemption would not be available where a non-reporting issuer conducts an exchange offer primarily for the purposes of giving its investors freely tradable securities and creating a public market in, or manipulating the market for, those securities. Likewise, it would be inappropriate to rely on the exemptions in effecting a merger of a public ''shell'' company to take a private company public. These mergers commonly are used to develop a market for the merged entity's securities, often as part of a scheme to manipulate the market for those securities.

[57] Of course, if a communication contains material information, that information must be disclosed in the registration statement that is declared effective. Therefore, the information ultimately will be subject to section 11 liability (15 U.S.C. 77k) as well.

[58] In some cases, these communications are filed and incorporated by reference into registration statements, and as a result also are subject to section 11 liability.

[59] New Rule 165(e). This provision is similar to the good faith standard in Rule 508(a) of Regulation D (17 CFR 230.508(a)). Although an immaterial or unintentional failure to file or delay in filing is a violation of the filing requirement, it would not render the exemption unavailable. Factors to be considered in determining whether a delay in filing is immaterial or unintentional include: The nature of the information, the length of the delay, and the surrounding circumstances, including whether a *bona fide* effort was made to file timely. If a written communication is made late in the day and the offeror attempts to file it, but experiences difficulty in filing electronically on EDGAR, and files as soon as practicable after business hours or the following business day, the exemption will continue to be available.

[60] 15 U.S.C. 77e. Rule 135 generally permits prospective offerors to issue notices that include the following information: (1) The name of the issuer; (2) the title, amount and basic terms of the securities to be offered, the amount of the offering, if any, by selling security holders, the anticipated time of the offering, and a brief statement of the manner and purpose of the offering, without naming the underwriters; and (3) any statement or legend required by state law. Other limited information also is permitted under the rule for rights offerings, exchange offers and offers to employees of the issuer or an affiliate.

[61] Cash tender offers and cash mergers do not involve the Securities Act, and thus no reliance on Rule 135 is necessary.

[62] Rule 145 is the rule that applies the registration requirements to business combinations involving security holder voting decisions. Rule 145(b)(1) provides that written communications containing only specified information about mergers and similar transactions are not deemed offers or a prospectus. Rule 135(a)(4) contains a similar provision for communications about exchange offers. Rule 145(b)(2), which provides that certain communications subject to the proxy rules are not offers, is being rescinded as proposed.

information that will not be deemed an offer. We are adopting those revisions.[63]

In addition to the changes proposed, we asked whether Rule 135 notices should be filed. Although Rule 135 does not currently require these notices to be filed, in many cases the 135 notice would be the first written communication relating to a proposed business combination transaction. We believe it is important for this information to reach the marketplace promptly and on a widespread basis. Generally, these notices are short documents (*e.g.*, press release or other form of written notice of an intended offer). Currently, the first press release or other written communication announcing a proposed business combination transaction often is filed under cover of Form 8–K.[64] In addition, under the new regulatory scheme these communications would have to be filed under the proxy or tender offer rules, if applicable. As a result, we do not believe that a filing requirement for the first public communication regarding a business combination will impose a significant burden.

We are adopting a filing requirement that encompasses Rule 135 notices. These notices must be filed under new Rule 425 because they are written communications relating to a proposed transaction. Even though we are requiring these notices to be filed, our rules provide that they will not constitute offers and therefore will not have section 12(a)(2) prospectus liability.[65] In addition, subsequent notices or announcements made under Rule 135 that do not contain new or different information are not required to be filed. This approach is consistent with the filing requirement under each of the three regulatory schemes.

4. Public Announcement

Under the terms of the exemptions, written communications must be filed beginning with the first public announcement of the business combination transaction. Today we are adopting a specific definition of ''public announcement'' that encompasses all communications that put the market on notice of a proposed transaction. For purposes of determining when a filing obligation is incurred under the exemptions, ''public announcement'' means any communication by a party to the transaction, or any person authorized to act on a party's behalf, that is reasonably designed to, or has the effect of, informing the public or security holders in general about the transaction.[66] We asked in the Proposing Release whether the term ''public announcement'' should be defined, and if so, how it should be defined. Although the commenters that responded favored a bright line definition, they opposed a broad definition that could potentially create difficulties in determining when a filing obligation is triggered.

We agree that a definition is necessary, but we believe that the definition should be sufficiently broad to cover communications that are reasonably designed to, or have the effect of, putting the markets or the security holders on notice of a proposed transaction. We do not believe the definition should be so narrow that the parties must actually intend to effect a broad dissemination of the information.[67]

1C. Communications Under the Proxy Rules

1. Rule 14a–12 Expanded

We are revising Rule 14a–12,[68] substantially as proposed, to permit both written and oral communications before the filing of a proxy statement so long as all written communications related to the solicitation are filed on the date of first use.[69] This is the same filing requirement adopted for the communications exemption under the Securities Act.[70] This exemption is not limited to business combination transactions, but is available regardless of the subject matter of the solicitation. Oral communications do not need to be reduced to writing and filed. In revising Rule 14a–12, we retain substantially all the proposed conditions to reliance on the exemption. These conditions are that no form of proxy is furnished until a proxy statement is delivered, the obligation to disclose participant information, and the requirement to file all written communications with a prominent legend advising security holders to read the proxy statement.

As a result of these changes to Rule 14a–12, management can communicate more freely with security holders about significant corporate events, including a proposed merger or acquisition, or other significant corporate governance matters that may require a security holder vote. Likewise, security holders are able to communicate more freely with one another. The revised rule does not, however, expand a company's or security holder's ability to secure promises to vote a certain way before a proxy statement is provided.[71] The expansion of Rule 14a–12 to non-contested matters is premised on the same rationale for increasing communications related to business combination transactions under the Securities Act. We recognize the many recent developments in technology that have enabled companies to communicate more frequently with security holders at a significantly reduced cost. In addition, security holders and the markets are demanding more information from public companies about new developments and proposed transactions. In light of the rapid pace of change in the securities markets and developments in technology, we believe the time has come to update the proxy rules to permit security holder communications to flow more freely and to facilitate a more informed security holder base.

We believe that the requirement to file all written communications, the condition that no proxy or form of proxy be furnished to security holders before

[63] Changes to Rules 135 and 145 in the Securities Act Reform Release that were specifically tailored to capital-raising transactions are not being adopted at this time.

[64] 17 CFR 249.308.

[65] New Rule 425(b).

[66] New Rule 165(f)(3). A similar definition of ''public announcement'' is included in revised Rules 13e–4(c) and 14d–2(b).

[67] Of course, if the regulations of the self-regulatory organization on which the securities are listed require a public announcement of the transaction, that would constitute a public announcement for purposes of the communications exemptions.

[68] The expansion of Rule 14a–12 to cover all solicitations eliminates the need for many of the provisions in Rule 14a–11. As a result, we are rescinding Rule 14a–11 and moving paragraphs (d) and (f) of Rule 14a–11 to new Rule 14a–12. These two provisions apply if soliciting persons refer to information in annual reports or use reprints or reproductions of previously published materials in their soliciting materials. Revised Rule 14a–12 makes it clear that these provisions are limited to election contests.

[69] Written communications by soliciting parties before a proxy statement is furnished to security holders must be filed on the date of first use and must provide information regarding the participants and their interests or include a legend advising security holders where they can obtain this information. *See* revised Rule 14a–12(a)(1). Once a proxy statement is furnished to security holders, any additional soliciting materials used must be filed on the date of first use but need not include participant information or a legend advising where to obtain that information. *See* revised Rule 14a–6(b).

[70] Communications under revised Rule 14a–12 generally will be filed under cover of the proxy statement cover sheet, with the Rule 14a–12 box checked. If a transaction is subject to the Securities Act in addition to one or more of the other regulatory schemes (*i.e.*, the proxy or tender offer rules), the written communications only need to be filed under Securities Act Rule 425. Although the materials are only filed under the Securities Act, they also would be deemed filed and take liability under the proxy or tender offer rules, as applicable.

[71] Similarly, the revised rule does not change a security holder's obligation under section 13(d) of the Exchange Act (15 U.S.C. 78m(d)) to file or amend a Schedule 13D (17 CFR 240.13d–101) when a voting arrangement, agreement or understanding is reached with respect to a company's securities.

a written proxy statement is delivered, and the requirement to include a legend on all written communications advising security holders to read the proxy statement and where to find participant information should be sufficient to protect against misleading solicitations. Together with the antifraud provisions of Rule 14a–9,[72] these requirements should maintain the integrity of the solicitation process and adequacy of information disseminated to security holders.[73] In addition to these safeguards, security holders will receive a complete proxy statement before they can vote.

In the Proposing Release we solicited comment on whether a federally mandated proxy solicitation period would be appropriate for mergers and similar transactions in light of the free communications permitted under the exemption. We noted that security holders may need a minimum amount of time (*e.g.*, 20 business days), similar to that in tender offers, to digest the free communications together with the information in the proxy statement. Most commenters that responded to this question were opposed to a minimum solicitation period. Because this is an area that traditionally has been governed by state corporate law, and in light of the improved ability of security holders to access information through electronic means, we believe that the existing solicitation periods are adequate. We are not adopting a minimum solicitation period at this time.

We also asked whether the proxy rules should be amended to permit direct delivery of proxy statements and other soliciting materials to non-objecting beneficial owners to facilitate more timely and informed voting decisions. We were concerned that security holders holding securities in street name may not receive materials from banks, broker-dealers, or other nominees in a timely fashion. While we believe that direct delivery of proxy materials to non-objecting beneficial owners may have benefits for security holders, at this time we reserve this concept for a future rulemaking project.

[72] 17 CFR 240.14a–9.

[73] We note that a communication relating to an investment company that is permitted by Rule 14a–12 generally would have omitted to state a fact necessary in order to make the statements in the communication not materially misleading unless the communication includes the information specified in Rule 34b–1 under the Investment Company Act of 1940.

a. The ''As Soon as Practicable'' Requirement

Many of the commenters urged us to revise the current and proposed condition in Rule 14a–12 that a written proxy statement meeting the requirements of Regulation 14A be sent or given to solicited security holders at the earliest practicable date. These commenters pointed out that, in practice, when the purpose of a solicitation becomes moot or the solicitation is otherwise discontinued, persons making pre-filing communications in reliance on the rule generally do not, and should not be required to, send security holders a written proxy statement. We recognize that literal adherence to the delivery requirement in Rule 14a–12 in circumstances where a solicitation is canceled prematurely may not provide a significant benefit to security holders, but could result in unnecessary costs to the soliciting parties and potentially mislead security holders into believing that the solicitation is ongoing.

In view of these concerns, current practice, and the overall approach to communications adopted today, we are eliminating the current ''as soon as practicable'' requirement. As revised, Rule 14a–12 requires that a definitive proxy statement be furnished to security holders when a form of proxy is either given to or requested from security holders.[74] When proxies are first requested from security holders the mandated disclosure document must be delivered to them so they can make informed voting decisions. This approach is consistent with the delivery requirements adopted under the other regulatory schemes.[75] As a result, parties relying on the rule are not obligated to furnish a written proxy statement if the solicitation is discontinued for any reason. If a solicitation is discontinued, we believe it would be appropriate for the soliciting persons to inform previously solicited security holders that the solicitation is over and provide a brief explanation of why it is being canceled.

b. Participant Information

We are modifying the current requirement to disclose participant information in proxy materials. Instead, the revised rule requires a prominent legend on written communications advising security holders where they can obtain a detailed list of the names, affiliations and interests of participants in the solicitation.[76] Of course, the soliciting materials could include the participant information in full, as currently required, instead of a legend.

The legend may refer to either a previously filed communication that contains the participant information, or a separate statement that contains the participant information and is filed as Rule 14a–12 material.[77] We are not eliminating the requirement to make participant information available to security holders. Rather, we are requiring disclosure of this information once instead of in every communication.

c. ''Test the Waters''

In addition to our proposal to expand Rule 14a–12, we solicited comment on adopting a broader ''test the waters'' approach to proxy solicitations. Under this approach, parties could engage in soliciting activities without filing proxy material so long as no form of proxy is requested or sent. Test the waters would permit both written and oral proxy solicitations before the filing of a proxy statement. Unlike the proposed expansion of Rule 14a–12, however, test the waters would not require written communications to be filed on first use.

Many commenters favored our concept of test the waters, but a few commenters expressed concern that it could result in unregulated and secret solicitations. At this time, we believe that our expansion of Rule 14a–12, as adopted, should provide sufficient flexibility to companies to communicate more frequently with security holders on a timely basis. After we gain some experience with communications under the expanded Rule 14a–12, depending on its effects, we may consider moving toward a test the waters approach in future rulemaking.

2. Limited Confidential Treatment of Merger Proxy Materials

Today, a proxy statement relating to a merger, consolidation, acquisition or similar matter may be filed confidentially with the Commission.[78] If the staff decides to review the proxy statement it may issue comments to the

[74] Revised Rule 14a–12(a)(2).

[75] For example, in Part II.D.1 below, we are revising the definition of commencement in the tender offer rules so that a complete tender offer statement need not be filed and disseminated until the means to tender are provided to security holders.

[76] In response to our question asking whether to retain the requirement to disclose the names of all participants and their interests, several commenters expressed the view that the requirement has resulted in lengthy and boilerplate disclosure that can be costly for participants without providing any significant benefit for security holders.

[77] The information must be filed under cover of Schedule 14A with the appropriate box on the cover page checked to designate that the material is filed under Rule 14a–12.

[78] Rule 14a–6(e)(2) (17 CFR 240.14a–6(e)(2)).

filing parties. When all comments are resolved, a public filing is made either a definitive proxy statement or, if securities are being offered, a registration statement that wraps around the proxy statement. We proposed to eliminate the provision for confidential treatment. We note the practice of disclosing extensive deal-related information to the market before a registration statement or proxy statement is filed publicly. We do not believe that material public information regarding a merger should receive confidential treatment.

Many commenters opposed eliminating confidential treatment due to a concern for increased liability. These commenters pointed out that they may be required to make revisions to their proxy statement disclosure in response to staff comment that would be subject to unnecessary public scrutiny. It is not clear, however, why the proxy statement situation warrants different treatment from exchange offers and other public filings that are routinely amended in response to staff comment. One commenter suggested that we retain confidential treatment when the parties to a transaction do not publicly disclose information about the transaction outside the proxy statement.

We have decided to retain confidential treatment under limited circumstances. Where the parties to a merger or other business combination transaction limit their public communications to those specified in Rule 135,[79] confidential treatment will continue to be available for the proxy materials. If, however, the parties elect to publicly disclose, either orally or in writing, information relating to the transaction that goes beyond Rule 135, confidential treatment will not be available.[80]

As a result, the parties to the transaction may choose either to forgo confidential treatment and communicate publicly about the deal in reliance on one of the new exemptions, or invoke confidential treatment and refrain from any publicity outside the proxy statement, except for the basic information permitted by Rule 135. We will use Rule 135 as a bright line in determining whether parties to a transaction have publicly disclosed sufficient information to the point that confidential treatment of the proxy materials is no longer warranted. This bright line will be applied whether or not the transaction is subject to the Securities Act and Rule 135. If a preliminary proxy statement is filed confidentially, but information beyond Rule 135 is subsequently disclosed, confidential treatment will no longer be available and all proxy materials related to the transaction must be filed publicly.

Two commenters recommended that we institute a procedure that would allow parties to seek an expedited, confidential pre-filing review of pro forma financial statements and other accounting matters if confidential treatment is eliminated. Currently, parties are permitted to, and frequently do, initiate pre-filing conferences with our accounting staff to resolve sensitive accounting issues before the filing a merger proxy statement. Our accounting staff will continue to be available for pre-filing conferences with filing parties.

Several commenters also indicated that if we decided to eliminate confidential treatment, we should not require that all exhibits be filed with the first public filing of the proxy statement. These commenters noted that in many cases some exhibits may not exist or are not in final form when the proxy statement is first filed. The limitation on confidential treatment adopted today would not require that all exhibits be filed with the initial filing of a proxy statement. As is the case today, a proxy statement may be filed first, without any exhibits. Schedule 14A does not have any exhibit requirements. Exhibits could be filed at a later date when the registration statement is wrapped around the proxy statement. If all exhibits are not final or complete at the time the registration statement is first filed, then those exhibits could be filed in an amendment to the combined proxy statement/registration statement.

3. Timing of Filings

Rule 14a–6(b) requires that definitive proxy materials be ''filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to security holders.'' [81] Similar language appears in several other proxy and information statement filing rules.[82] The mailing alternative, however, is no longer an option because companies must file electronically.[83] Therefore, we are amending the proxy and information statement filing rules as proposed to require filing no later than the date the materials are first sent or given to security holders.[84] This change is consistent with the filing requirements imposed under the exemptions adopted today.

We continue to believe that definitive materials should be available to security holders, the market and the staff as promptly as possible. EDGAR and other electronic sources of information, including the Internet, increasingly are relied upon by the investment community for information regarding public companies. When there is a lag between the time information is first disseminated and the time it is filed, persons relying on our filings for information on public companies are placed at a disadvantage.

D. Communications Under the Tender Offer Rules

1. ''Commencement,'' Communications, and Filing Requirements

Currently, the tender offer rules restrict a third-party bidder's communications regarding a proposed tender offer. The restrictions on communications stem from the concept of ''commencement,'' the five business day rule for cash tender offers,[85] and the requirement that a registration statement be filed promptly for registered exchange offers.[86] A target's

[79] Rule 135 generally exempts from the definition of ''offer'' any notice that states no more than specific limited information; *see* n.60 above. The Rule 135 limit on communications would apply to all parties to the transaction and anyone acting on their behalf in communicating to the public.

[80] Revised Rules 14a–6(e)(2) and 14c–5(c)(2). Confidential treatment will continue to be unavailable for going-private or roll-up transactions.

[81] 17 CFR 240.14a–6(b).

[82] *See* Rules 14a–4(f) (17 CFR 240.14a–4(f)), 14a–6(c) (17 CFR 240.14a–6(c)), 14a–11(c) (17 CFR 240.14a–11(c)), 14a–12(b) (17 CFR 240.14a–12(b)) and 14c–5(b) (17 CFR 240.14c–5(b)).

[83] *See* Rule 101(a)(1)(iii) of Regulation S–T (17 CFR 232.101(a)(1)(iii)). Paper filings are permitted only if a hardship exemption is available. Foreign private issuers that are not required to file electronically are exempt from the proxy and information statement requirements. Exchange Act Rule 3a–12–3 (17 CFR 240.3a–12–3).

[84] We also are adopting the proposed clarification to Rule 13(d) of Regulation S–T. The revised rule makes it clear that if a communication takes place after our official business hours (*i.e.,* 5:30 p.m. Eastern time) or on a non-business day, the communication must be filed electronically on EDGAR the following business day. This revision supersedes the interpretive position expressed by the Division of Corporation Finance in *Henry Lesser, Esq.* (November 28, 1995). This provision applies to all our rules that require filing on the same date that information is furnished, including the Securities Act, proxy and tender offer rules.

[85] Currently, an offer is deemed to ''commence'' on public announcement of the following limited information: the identity of the bidder, the identity of the subject company, the amount and class of securities sought and the price or range of prices offered, unless a tender offer statement is filed within five business days of the announcement and disseminated to security holders or the bidder makes a subsequent public announcement withdrawing the offer. *See* Rule 14d–2(b) and (c) (17 CFR 240.14d–2(b) and (c)). We refer to this as the ''five business day rule.''

[86] Although third-party bidders offering cash or exempt securities must file a tender offer statement within five business days, bidders offering registered securities are not bound by the same rule. They must file a registration statement relating to the securities offered ''promptly'' after announcing the limited information specified in Rule 135. *See* Rule 14d–2(e) 17 CFR 240.14d–2(e)).

communications regarding a tender offer are similarly restricted.[87] To harmonize the treatment of communications regarding business combination transactions under the three regulatory schemes, and to promote the dissemination of information to all security holders on a more timely basis, we are modifying the definition of ''commencement'' and eliminating the five business day rule and the requirement to promptly file a registration statement after announcing a registered exchange offer.[88]

In place of these rules, we are adopting a filing requirement for all written communications that relate to a tender offer beginning with and including the first public announcement of the transaction.[89] As with communications subject to the Securities Act and the proxy rules, written communications must be filed on the date that the communication is made.[90] In addition, written communications must contain a legend advising security holders to read the full tender offer or recommendation statement when it becomes available.

Under the revised rules, ''commencement'' is when the bidder first publishes, sends or gives security holders the means to tender securities in the offer.[91] We believe that security holders need the information required by the tender offer rules when they are either asked or able to tender their securities in an offer.[92]

To minimize the potential for dissemination of false offers into the marketplace in the absence of the five business day rule, we are adopting new Rule 14e–8. As proposed, this rule prohibits bidders from announcing an offer: without an intent to commence the offer within a reasonable time and complete the offer; with the intent to manipulate the price of the bidder or the target's securities; or without a reasonable belief that the person will have the means to purchase the securities sought. We believe that a specific rule prohibiting such conduct is appropriate. This antifraud rule is intended as a means to prevent fraudulent and misleading communications regarding proposed offers under the new communications scheme, in addition to the existing antifraud provisions.

Two commenters expressed concern that the rule could create new grounds for frivolous litigation, while others supported the proposal. Of course, if a target or other party decided to litigate under this new rule, the plaintiff would have the burden of showing that the bidder either did not have an intent to commence and complete the offer or did not reasonably believe it had the ability to purchase the securities. Although not required, a commitment letter or other evidence of financing ability (*e.g.,* funds on hand or an existing credit facility) would in most cases be adequate to satisfy the rule's requirement that the bidder have a reasonable belief that it can purchase the securities sought.[93]

Although we noted in the Proposing Release that eliminating the current restrictions could have potentially destabilizing effects on the securities markets,[94] it is not clear that the market effects differ greatly from those caused by merger announcements, which are not subject to the same constraints. Based on our experience with tender offers[95] and the factors discussed above influencing our decision to permit more communications regarding business combination transactions, we believe that the availability of more information on a timely basis will better assist security holders in making well informed individual investment decisions when confronted with news of a pending or proposed business combination. Accordingly, we are adopting the changes to the tender offer communications provisions substantially as proposed.

In reaching this conclusion, we note that communications regarding issuer tender offers are not similarly restrained.[96] Also, it appears that some bidders do not use the term ''tender offer'' in their public announcement of a proposed business combination transaction in an attempt to avoid triggering application of Rule 14d–2. Furthermore, security holders today, upon hearing news of a proposed tender offer for their securities (either directly by the formal notice published by the bidder or indirectly through rumors in the marketplace), must decide whether to: (i) Retain their securities until a tender offer statement is filed and disseminated so they can tender into the offer; or (ii) sell into the market at prevailing prices based on the limited information available.[97] Under the new approach, more time may elapse between announcement and the filing of the tender offer statement, but more information also may be available during that period. We do not believe there is a sufficiently compelling basis

[87] If the target company comments on the merits of an offer or otherwise makes a recommendation with respect to an offer, it may be required to file a disclosure document. *See* Rule 14d–9(a) (17 CFR 240.14d–9(a)).

[88] Revised Rule 14d–2(c). Rule 13e–4 has no comparable communications restrictions, but we are adopting changes to this rule to conform it to the new communications scheme.

[89] The public announcement also triggers the Rule 14e–5 restrictions on purchasing outside the tender offer, as discussed in Part II.G.5 below.

[90] Revised Rule 14d–2(b)(2). These communications will be filed under cover of Schedule TO or 14D–9, as appropriate. Both schedules have a box to check indicating that these are pre-commencement communications. No signature is required. *See* General Instruction D to Schedule TO and General Instruction B to Schedule 14D–9. If the transaction also is subject to the Securities Act, then communications must be filed under Rule 425 only, and those communications will be deemed filed under the tender offer rules.

[91] Generally, this will occur if the bidder provides security holders with a transmittal form to use to tender securities or if the bidder publishes an advertisement advising security holders how to tender in the offer or to contact the bidder for more information on how to tender securities in the offer. This also would occur if by some other means persons are able to tender securities to the bidder. At that time, the bidder must file and disseminate the tender offer schedule, and the required 20 business day period that all tender offers must remain open will begin to run. Revised Rule 14d–2(a).

[92] Although we are changing how a tender offer is commenced for purposes of the tender offer rules, we are not defining the term ''tender offer'' or changing our position on what activities may be deemed to constitute a tender offer. The tender offer rules still may apply to activities that function as unconventional tender offers. We maintain our position that the term ''tender offer'' should be interpreted flexibly in accordance with the intended purposes of sections 14(d) and 14(e). A determination of whether a particular transaction or series of transactions constitutes a tender offer will, of course, depend on the particular facts and circumstances and is not limited to ''conventional'' tender offers. *See* Release No. 34–15548 (Feb. 5, 1979) (44 FR 9956).

[93] This is not intended to change how bidders legitimately finance their offers today. Bidders may have sufficient funds on hand to complete the offer or they may arrange to borrow funds from an outside source. In most cases when the bidder expects to obtain funds from another source, financing is arranged in advance or immediately after announcing an offer. Bidders typically get a commitment letter from their lenders.

[94] *See* Part II.B.7.a of the Proposing Release and Release No. 34–15548 (February 5, 1979) (44 FR 9956).

[95] We have not observed any disruptive or destabilizing effects in cases where precommencement publicity is currently permitted, such as where Rule 135 information is disclosed regarding a proposed exchange offer more than five business days before a registration statement is filed.

[96] Issuer tender offers are subject to Rule 13e–4, which does not contain a comparable provision to the five business day rule or a requirement to file a registration statement promptly after announcing limited information about a registered exchange offer.

[97] Bidders often wait until the fifth business day following public announcement before filing a full tender offer statement in accordance with Rule 14d–3(a) (17 CFR 14d–3(a)). In addition, it can take several days before mailed copies of the tender offer statement are received by beneficial owners. Bidders offering registered securities must promptly file the registration statement after announcement, which in most cases is more than five business days after the announcement.

to continue treating third-party cash offers, exchange offers, issuer tender offers and mergers differently.[98]

Most of the commenters that addressed the proposals favored eliminating the five business days rule and the requirement to promptly file a registration statement after announcement of an exchange offer, as well as the revised definition of ''commencement.'' A few commenters, however, expressed concern that elimination of the five business day rule could revive certain inconsistent state law requirements. We do not believe that elimination of the five business day rule will result in a resurgence of inconsistent state anti-takeover statutes that impose disclosure or other requirements incompatible with our new regulatory scheme.

We have long defined when a tender offer commences. This definition served several purposes, including implementing a uniform nationwide timetable for the tender offer process, regulating the flow of information by identifying the date by which required disclosure filings must be made with the Commission, and helping to create a level playing field between bidders and targets. Under well-established principles, any state law that conflicted with this provision was preempted.

The new definition continues to serve these sorts of purposes—it establishes a uniform time at which a tender offer is deemed to commence, it continues to balance the rights and obligations of bidders and targets, and it facilitates the free flow of information from both bidders and targets before that date (subject to the antifraud provisions), based on our judgment that this flow of information is in the best interests of the holders of securities. The elimination of the five business day rule and the other changes in the rule are intended to provide security holders with the broadest possible disclosure of information at the earliest date possible.

We believe that courts would hold that any state law that conflicted with the new rule by attempting to establish a different commencement date or otherwise frustrating operation of the rule would be preempted.[99] For instance, we believe that any state provision that made it impossible to comply with both state and federal requirements or that created obstacles to the accomplishment and execution of the full purposes and objectives of the new rule would continue to be preempted.[100]

Security holders ultimately have the choice to sell into the market based on information disclosed early or wait until a complete, mandated disclosure document is sent to them before making an investment decision. The ability of security holders to sell into the market before a complete disclosure document is filed and disseminated is no different from their current position between the time a transaction is announced and the time a mandated disclosure document is filed and disseminated. However, we believe that liberalizing early communications will better serve investors and the markets by providing them with more information at an earlier date. The bidder continues to have the flexibility to commence promptly after the first public announcement. We encourage bidders to commence their offers as soon as they are able to do so, since security holders and other market participants will benefit from the complete information in the mandated tender offer materials. To the extent, however, that there are delays between announcement and commencement, we believe that investors will benefit from the free flow of information provided by the new regulatory scheme. Therefore, we are changing the current regulatory scheme, and is doing so we are clearly expressing our intent that these new rules serve, as an integrated whole, to regulate the various communications that persons may make regarding a potential or proposed business combination transaction.

Two commenters favored retaining the five business day rule for hostile offers, but eliminating it for negotiated transactions. We believe, however, that applying the rule only to hostile offers could present problems when the same target is the subject of both a negotiated transaction and a hostile offer, or when a negotiated transaction becomes hostile as a result of changed circumstances or another offer. Further, in light of the communications scheme we adopt today, it does not appear that security holders' best interests would be served by permitting expanded communications only with respect to negotiated transactions.

One commenter believed that the five business day rule provides investors and the markets with a degree of certainty regarding proposed offers and results in the dissemination of better information in a relatively short time. We believe that our requirements to file all written communications relating to a proposed transaction on first use will result in more information on a timely basis. As noted above, we do not believe bidders will have an incentive to unnecessarily delay commencing their offers because of the risk that market forces may affect the terms of the offer or a competing bidder will emerge.

Under these new and revised rules, bidders and targets alike have an increased ability to communicate with security holders along with the requirement to file all written communications related to an offer. Under the new scheme, the target must file all written communications relating to the transaction on the date the communication is made.[101] Targets need not file a formal recommendation statement until after the offer is formally commenced and a recommendation is made. The target remains obligated, however, to take a position with respect to the offer no later than 10 business days after the offer commences under Rule 14d–2.[102] If the target makes a recommendation after commencement, but before the tenth business day, then it must file a recommendation/solicitation statement on Schedule 14D–9 on or before the time the recommendation is first made.

These rules apply to issuer and third-party tender offers alike. In addition, the new rules make no distinction based on the form of consideration offered to security holders (*e.g.,* cash or stock). We do not believe that there is sufficient justification to treat tender offer communications differently based on either the nature of the bidder or the consideration offered. Security holders ultimately face the same investment decision—whether or not to tender in the offer.

2. Dissemination Requirements

We also reviewed the various methods to commence a tender offer in

[98] All tender offers must remain open for at least 20 business days. See Rule 14e–1(a) (17 CFR 240.14e–1(a)). If security holders are willing to wait to receive the tender offer statement containing the required information, they can consider the disclosure document in light of all earlier communications relating to the transactions before making an investment decision with respect to the offer. We have no reason to believe that the current minimum time period for tender offers is inadequate.

[99] *See Dynamics Corp. of America* v. *CTS Corp.,* 481 U.S. 69, 79 (1987).

[100] *See, e.g., Barnett Bank of Marion County* versus *Nelson,* 517 U.S. 25 (1996) (summarizing preemption principles); *see also Fidelity Fed. Sav. & Loan Assoc.* versus *de la Cuesta,* 458 U.S. 141, 154 (1982).

[101] Revised Rule 14d–9. These communications must include a legend similar to the one required on the bidder's pre-commencement communications, advising security holders to read the complete recommendation when it is available. Although we did not propose such a legend, we solicited comment on it, and the commenters who addressed the issue supported a legend requirement.

[102] *See* Rule 14e–2(a) (17 CFR 240.14e–2(a)).

the Proposing Release.[103] In reviewing these methods, we noted that long form publication [104] is rarely used by bidders due to the cost associated with publishing extensive information about the offer in a newspaper.[105] We proposed to eliminate long form publication.

Several commenters agreed that long form publication is rarely used, but urged us to retain the method, citing the lack of any abuse under the rule. In addition, these commenters noted that, in the future, long form publication may become a viable means of disseminating an offer using the Internet or another electronic delivery system. At this time, we do not believe that technology has developed to the point where bidders can rely solely on electronic media to disseminate information about a tender offer to security holders. In particular, posting the information on a web site alone would not be adequate dissemination.[106] Nevertheless, in response to commenters' requests that we retain long form publication as a means of commencement, we have decided not to eliminate it.

We solicited comment on whether the rules should continue to permit an offer to be commenced and disseminated by summary advertisement alone.[107] Currently, bidders that rely on the summary advertisement method to disseminate an offer tend also to mail their offering documents to security holders using a security holder list under Rule 14d–5. We asked whether bidders should always be required to use security holder lists when disseminating an offer. Two commenters favored retaining summary publication without the use of security holder lists. Both cited the lack of any abuse with the rule and the possibility that its elimination could force bidders to tip their hand when requesting a security holder list from the target in hostile transactions. Accordingly, we are not changing this aspect of the summary advertisement rule.[108] However, in keeping with the expansion of permissible communications, we are eliminating, as proposed, the current restriction on the information that may be included in a summary advertisement.[109]

Currently, bidders must hand deliver a copy of their tender offer statement and any additional tender offer materials to the target company as well as any other bidder that has made an offer for the same class of securities.[110] We proposed a similar delivery requirement for the first written communication disclosing a proposed offer. Under the new communications scheme for tender offers, bidders are able to disclose information about a proposed offer without commencing the offer.[111] In light of the many different communications media available to bidders, we believe targets need a reliable way to learn about proposed offers for their securities so they can respond in a timely manner. Therefore, we are adopting a requirement that the bidder deliver to the target and any other bidder the first written communication relating to the transaction that is filed, or required to be filed, with the Commission.[112] This material must be delivered on the date of the communication.[113]

E. Exchange Offers May Commence On Filing

1. Early Commencement

We are adopting the early commencement provision substantially as proposed, but extended to cover issuer exchange offers. Currently, registered exchange offers may not commence until the related registration statement becomes effective.[114] As we noted in the Proposing Release, this results in cash and stock tender offers being treated differently. Cash tender offers have a distinct timing advantage over stock tender offers because cash offers can commence as soon as a tender offer statement is filed and disseminated.[115] This change should minimize this regulatory disparity by permitting stock tender offers to commence as early as the date the related registration statement is first filed.

Almost all of the commenters that addressed early commencement indicated that it was a step in the right direction, but they believed more was needed to fully balance the regulation of cash and stock offers. We recognized in the Proposing Release that early commencement alone may not be sufficient to level the playing field between cash and stock tender offers because bidders would not be able to purchase shares tendered in the offer until after the related registration statement is effective. Accordingly, cash offers could close earlier than stock tender offers due to possible staff review and comment on the registration statement.

We solicited comment on whether there are other changes (*e.g.*, expedited staff review, automatic effectiveness on filing or effectiveness within a specified time after filing), that might further reduce the disparity in regulatory treatment. We also asked whether

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[103] *See* Part II.B.7.b of the Proposing Release.

[104] Rule 14d–2(a)(1) (17 CFR 240.14d–2(a)(2)).

[105] A bidder must publish the information specified in Rule 14d–6(e)(1) (17 CFR 240.14d–6(e)(1)).

[106] Not all security holders have access to the Internet. Even those that do have access would not have notice that a tender offer for their company's securities was posted on a web site. All commenters who addressed the question opposed electronic dissemination as the sole means to disseminate an offer, noting that there are no electronic sources of information as commonly available and widely followed as newspapers. Of course, it is permissible to post tender offer materials on a web site in addition to using other methods of dissemination. Electronic media also may be used to satisfy requirements to deliver tender offer material in accordance with our guidelines for electronic delivery. *See* Release No. 33–7233 (October 6, 1995) (60 FR 53458). For example, a summary advertisement for a tender offer could contain a consent form for security holders to indicate their willingness to receive the complete tender offer materials by means of a specified electronic medium.

[107] Rule 14d–6(a)(2) (17 CFR 240.14d–6(a)(2)).

[108] Similarly, we are retaining the current requirement that bidders using stockholder lists also publish summary advertisements.

[109] We are amending Rule 14d–6(a)(2) to delete the language limiting the information that can appear in a summary advertisement. We are retaining the prohibition against including a transmittal form with the summary advertisement. A summary advertisement may (and must, if it is designed to commence the offer) include the means to tender, *e.g.*, a telephone number to call to obtain the complete tender offer materials, including the transmittal form.

[110] Rule 14d–3(a)(2). The current rule also requires telephonic notice and mailing of tender offer material to any securities exchange or the NASD on which the securities are listed or traded. We are not extending this delivery requirement to pre-commencement communications because the exchanges and the NASD are relying less on paper filings and more on electronic databases to obtain EDGAR filings.

[111] Communications regarding offers can be made without a summary advertisement of the offer appearing in newspapers.

[112] As proposed, this requirement would have been triggered by the first communication setting forth specified information. We believe, however, that it will be simpler for bidders to know that this obligation will attach at the same time the first pre-commencement communication is filed. Once target companies and other bidders receive notice of the transaction, they can monitor the Commission's filings for subsequent pre-commencement materials.

[113] Revised Rule 14d–2(b)(2). Instead of hand delivery, the rule only requires ''delivery,'' so the bidder may use any other means of delivery that is equally prompt and equally likely to receive the attention of the target company (*e.g.*, an e-mail to the corporate secretary, chief executive officer and other persons of similar authority at the target company, where the target company uses these e-mail addresses for public communications). We have similarly modified the bidder's current obligation to hand deliver a copy of the mandated disclosure document. *See* revised Rule 14d–3(a)(2).

[114] *See* Rule 14d–2(a)(4). Commencement occurs when definitive copies of the prospectus/tender offer material are first published, sent or given to security holders.

[115] As a result, the 20 business day period that a tender offer must remain open typically begins to run earlier for cash offers than stock offers. See Rule 14e–1(a).

expedited staff review would minimize the regulatory differences.

Commenters had mixed views. Some commenters favored automatic effectiveness or effectiveness shortly after filing, while others believed the potential for post-effective staff review and comment would discourage bidders from offering securities as consideration in a tender offer.[116] Most commenters, however, were in agreement that expedited staff review is essential to balancing the regulatory treatment of the two types of offers. Due to the risks associated with automatic effectiveness and effectiveness shortly after filing (before the staff has had an adequate opportunity to review the disclosure), we believe these measures would not be in security holders' best interests, especially in the business combination context where the disclosure and accounting issues can be particularly complex. We are, however, committed to expediting staff review of exchange offers so that they may compete more effectively with cash tender offers.

As proposed, early commencement was limited to third-party offers. We solicited comment, however, on whether early commencement would provide any benefits to issuers making exchange offers for their own securities. Several of the commenters believed that issuers should have the same ability to commence an exchange offer upon filing.[117] We agree that there is no reason to exclude issuer exchange offers from early commencement, and therefore, we have decided to treat third-party and issuer exchange offers alike under the new rule.

We also asked whether there should be a proxy analogue to early commencement so that parties to a business combination transaction involving a voting decision would be able to furnish proxy cards with preliminary proxy materials. Currently, proxy cards may only accompany the definitive proxy statement/prospectus.[118] A proxy analogue would further balance the regulatory treatment of mergers and tender offers.

We are not adopting a proxy analogue to early commencement at this time. We note that all tender offers must remain open for at least 20 business days.[119] Currently, the minimum proxy solicitation period is dictated by applicable state corporate law requirements.[120] A proxy solicitation period, accordingly, could be less than 20 business days. Further, under the new rules adopted today, we are specifying the appropriate time periods necessary for dissemination of a prospectus supplement when there are material changes to the information previously disseminated. The proxy rules do not have similar provisions. Since the proxy solicitation area has traditionally been governed by state law, and because we are not adopting a federally mandated proxy solicitation period,[121] we are not adopting an analogue to early commencement that would permit the sending of proxy cards along with preliminary proxy materials. We may consider extending the concept to the solicitation of proxies once we have sufficient experience with early commencement of exchange offers. Any proxy analogue to early commencement would, of course, require the establishment of a uniform proxy solicitation period and well-defined time periods for the dissemination and receipt of a supplement containing all material changes from the preliminary proxy statement previously sent or given to security holders.[122]

Under the new rules,[123] to commence an exchange offer early (before effectiveness of a registration statement), a bidder must file a registration statement relating to the securities offered and include in the preliminary prospectus all information, including pricing information,[124] necessary for investors to make an informed investment decision.[125] Information may not be omitted under Rule 430 or Rule 430A under the Securities Act.[126] Bidders also must disseminate the prospectus and related letter of transmittal to all security holders and file a tender offer statement with us before the exchange offer can commence.[127]

Early commencement is at the option of the bidder. Exchange offers can commence as early as the filing of a registration statement, or on a later date selected by the bidder up to the date of effectiveness.[128] If a bidder does not commence its exchange offer before effectiveness of the related registration statement, then the exchange offer would need to commence on or shortly after effectiveness, as is the case today.

As proposed, we are adopting new Rule 162 to permit the tender of securities into an exchange offer before a registration statement is effective.[129] New Rule 162(a) exempts the tender of securities from section 5(a) of the Securities Act.[130] Security holders may

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[116] The latter group was primarily concerned that staff comment could necessitate the dissemination of a post-effective amendment.

[117] These commenters also urged us to extend early commencement to going-private transactions as well. We do not believe going-private transactions warrant early commencement, especially in light of the numerous comments issued by the staff of the Division of Corporation Finance that result in significant changes to the disclosure. Therefore, we are not extending early commencement to Rule 13e–3 transactions. In addition, as proposed, early commencement is not available to roll-up transactions. A roll-up transaction is any transaction or series of transactions that directly or indirectly, through acquisition or otherwise, involves the combination or reorganization of one or more ''finite-life'' entities (usually limited partnerships) where the securities to be issued are registered under the Securities Act. *See* Release No. 33–6900 (June 17, 1991) (56 FR 28979); Release No. 33–6922 (October 30, 1991) (56 FR 57237); Release No. 33–7113 (December 1, 1994) (59 FR 63676); and the 900 series of Regulation S–K.

[118] Rule 14a–4(f).

[119] Rule 14e–1(a).

[120] Most state corporate laws require that notice of a meeting be sent to security holders no less than 10 days and no more than 60 days before the meeting.

[121] *See* Part II.C.1 above.

[122] *See* Part II.E.2 below discussing appropriate time periods for the dissemination of a prospectus supplement containing materials changes.

[123] New Rule 162 and revised Rules 13e–4(e)(2) and 14d–4(b).

[124] If the registration statement as first filed does not contain a prospectus with this information, the bidder may file a pre-effective amendment to supply the requisite information and then commence the offer.

[125] We are not changing our current position regarding the level of information necessary to adequately inform security holders of the consideration offered; the pricing information required is the same information that would be required in an effective registration statement today. Often, in a business combination transaction the consideration offered to security holders is based on a formula pricing mechanism that is based on the market price of either the target or the bidder's securities during a specified period. The requirement to provide pricing information in a prospectus that is delivered to security holders to commence an exchange offer would be satisfied if all material elements of the formula are described in sufficient detail so that security holders can evaluate the offer. A fixed price is not required under early commencement.

[126] Rule 430 and 430A (17 CFR 230.430 and 430A).

[127] Because tender offer statements generally incorporate by reference a substantial amount of the required information from the related registration statement, the actual filing of a tender offer statement would serve primarily as notice to us and the markets that the exchange offer commenced. Of course, any prospectus furnished to security holders before the registration statement is effective must include the red herring legend required by Item 501(b)(10) of Regulation S–K (17 CFR 229.501(b)(10)).

[128] Regulation M (17 CFR 242.100 through 242.105) prohibits purchases of the bidder's securities during an exchange offer's restricted period, beginning when the bidder commences its offer. The restrictions under Rule 10b–13 (new Rule 14e–5) start when the bidder makes its first public announcement.

[129] Rule 162, as adopted, is extended to issuer exchange offers subject to Rule 13e–4 as well as third-party exchange offers subject to Regulation 14D (17 CFR 240.14d–1 through 17 CFR 240.14d–101).

[130] This exemption is necessary to prevent the tendering of securities into an offer from being viewed as a ''sale'' without an effective registration statement. We are using our exemptive authority

withdraw tendered securities until they are purchased, and bidders may not purchase the tendered securities until the registration statement is declared effective, as is currently the case. Because security holders must receive a mandated disclosure document before having to make an investment decision, we believe that early commencement, together with the communications scheme adopted today, is consistent with the public interest and the protection of investors. Early commencement gives bidders an incentive to disseminate their offering materials broadly to all security holders as soon as practicable. Further, the new rule provides bidders with greater flexibility in choosing the form of consideration to offer in a business combination transaction and should serve to facilitate the growth of our capital markets.

2. Dissemination of a Supplement and Extension of the Offer

Under the early commencement provision adopted, bidders are required to disseminate a prospectus to all security holders. If a bidder wants to commence its exchange offer early, it must disseminate a preliminary prospectus to all security holders as discussed above. The new rules also provide that bidders sending a preliminary prospectus must disseminate a supplement to security holders if there are any material changes, whether as a result of staff review, or due to any other material changes in the information previously disclosed. Exchange offers must remain open for a specified minimum period of time after a supplement is sent to security holders containing the new information, depending on the significance of the change. This is to permit security holders to react to the information by tendering securities or by withdrawing securities already tendered.

Since the tender offer rules do not currently establish specific minimum time periods necessary for the disclosure and dissemination of material changes, other than those relating to changes in price or the amount of securities sought,[131] we are establishing well-defined periods necessary for the dissemination of a prospectus supplement that contains material changes under early commencement. The mandated periods we adopt today are consistent with our current rules and interpretive positions in this area.[132] Therefore, we are revising Rule 14d–4 to specify the minimum time periods necessary for the dissemination of changes to preliminary prospectuses that are used to commence an exchange offer early.[133] As a result, exchange offers that commence early must remain open for at least:

- Five business days for a prospectus supplement containing a material change other than price or share levels;
- Ten business days for a prospectus supplement containing a change in price, the number of shares sought, the dealer's soliciting fee, or other similarly significant change;
- Ten business days for a prospectus supplement included as part of a post-effective amendment; and
- 20 business days for a revised prospectus when the initial prospectus was materially deficient; for example, failing to comply with the going-private rules or filing a ''shell'' document solely to trigger commencement and staff review.[134]

Of course, if a material change in the information previously disseminated to security holders occurred shortly before the expiration of the offer, a prospectus supplement would need to be disseminated to security holders and the offer extended for the appropriate length of time. We also believe that these time periods represent general guidelines that should be applied uniformly to all tender offers, including those subject only to Regulation 14E.[135]

We asked whether bidders should be required to deliver a final prospectus to security holders. Commenters who addressed the issue believed that the requirement to deliver prospectus supplements containing all material changes should effectively eliminate the need for the dissemination of a final prospectus. We agree that the informational purpose of the prospectus may best be served by requiring bidders to deliver to security holders prospectus supplements containing material changes rather than redeliver a final prospectus repeating substantial amounts of information that was previously delivered.[136] The use of prospectus supplements should adequately inform security holders of the information they need to make an informed investment decision.

Accordingly, we are using our exemptive authority[137] to exempt exchange offers that commence early from the final prospectus delivery requirement.[138] In doing so, we are not changing the final prospectus delivery requirement in Exchange Act Rule 15c2–8(d).[139] Under these circumstances, where a preliminary prospectus is delivered to security holders along with prospectus supplements containing material changes to the information previously disseminated, we believe that the cost of delivering a final prospectus is not justified by any marginal benefit to security holders. Although we are eliminating the requirement to deliver a final prospectus, bidders would still need to file a final prospectus.

F. Disclosure Requirements for Tender Offers and Mergers

1. Schedules Combined and Disclosure Requirements Moved to Subpart 1000 of Regulation S–K (''Regulation M–A'')

Currently, there are different disclosure schedules for issuer tender offers, third-party tender offers and going-private transactions.[140] Since a given transaction may involve more than one of these regulatory schemes, a company may be required to file a separate disclosure document to satisfy each applicable disclosure regime. In

under section 28 of the Securities Act to adopt this new rule.

[131] Rule 14e–1(b) [17 CFR 240.14e–1(b)]. A tender offer must remain open for ten business days after a notice of an increase or decrease in the percentage of the class of securities being sought, the consideration offered, or the dealer's soliciting fee.

[132] *See* Release No. 34–24296 (April 3, 1987) [52 FR 11458].

[133] Revised Rules 14d–4(b) and (d) and 13e–4(e). This approach was favored by all commenters who addressed the issue.

[134] The 20 business day period required by the tender offer rules will not begin to run if the prospectus disseminated to security holders is materially deficient. For example, if the initial prospectus does not comply with the roll-up rules, the minimum solicitation period under the roll-up rules will not begin until a revised prospectus satisfying the roll-up rules is disseminated.

[135] 17 CFR 240.14e–1 through 17 CFR 240.14e–8.

[136] Any supplements sent to security holders should present the informational changes in a clear, concise and understandable manner. *See* Rule 421 of Regulation C (17 CFR 230.421). If there are a number of changes necessitating the delivery of several supplements, offerors should consider the need to give security holders a complete unified document containing all changes and updates in a revised preliminary or final prospectus.

[137] Section 28 of the Securities Act.

[138] *See* new Rule 162(b), which provides an exemption from section 5(b)(2) of the Securities Act (15 U.S.C. 77e(b)(2)). This rule does not provide an exemption for exchange offers that commence on the date of effectiveness or later, for which a final prospectus must be delivered to security holders. In the Securities Act Reform Release we proposed to eliminate the requirement to deliver a final prospectus for certain capital-raising transactions, but not business combination transactions. *See* proposed Rule 173 and Part VIII.C.3.b of the Securities Act Reform Release.

[139] 17 CFR 240.15c2–8(d). This rule requires all brokers or dealers that participate in a distribution of securities registered under the Securities Act to take reasonable steps to comply promptly with the written request of any person for a copy of the final prospectus. The broker or dealer must comply with this request until the expiration of the applicable 40-day or 90-day period under section 4(3) of the Act. 15 U.S.C. 77(d)(3). *See* Rule 174 (17 CFR 230.174).

[140] Schedules 13E–4, 14D–1 and 13E–3, respectively.

addition, the disclosure requirements appearing in the rules and schedules can often lead to duplicative, and sometimes inconsistent, requirements. In light of the increased pressure to announce a business combination transaction soon after it is entered into and the attendant requirement to file mandated disclosure documents quickly, we proposed to integrate, simplify and update the disclosure requirements currently in the rules and schedules. Our basic approach was to combine all the disclosure requirements in one central location in a subpart of Regulation S–K, called Regulation M–A. The specific disclosure requirements in schedules were keyed to items under Regulation M–A in a manner consistent with the integrated disclosure system previously adopted for proxy and registration statements.

All commenters addressing the proposed changes in this area believed that it was time to update and simplify the disclosure requirements for business combination transactions.[141] We are adopting Regulation M–A substantially as proposed. This series of disclosure items incorporates all the current disclosure requirements for issuer and third-party tender offers, tender offer recommendation statements and going-private transactions. The new regulation includes some disclosure items for cash merger proxy statements as well. We have made slight modifications, where necessary, to harmonize and clarify the requirements, as well as a few substantive changes that are discussed below in more detail. In some cases the disclosure requirements may appear different, but that is because we have made an effort to draft the items in Regulation M–A using clear, plain language. In the future, we expect to expand this new regulation to cover additional disclosure items as necessary.

We are combining current Schedules 13E–4 and 14D–1 (the schedules now used for issuer and third-party tender offers, respectively), into new Schedule TO, as proposed.[142] In addition, we are changing the rules to allow one filing to satisfy both the tender offer and going-private disclosure requirements.[143] As a result, the information required by Schedules 14D–1, 13E–4 and 13E–3 can be disclosed in one combined filing.[144] We believe that these revisions will reduce the need to file two or more schedules for what is essentially the same transaction.[145]

We have included an instruction in new Schedule TO, as proposed, listing the specific line items that must be complied with for different types of transactions.[146] In addition, we have revised the current instruction requiring information that is incorporated by reference to be filed as an exhibit. As revised, filers can incorporate information included in documents previously filed electronically on EDGAR without refiling that information as an exhibit to the schedule.[147] To the extent that the existing schedules permit filers to include negative answers in the schedule, but not in the disclosure document sent to security holders, filers will continue to have the ability to omit that information from documents sent to security holders.[148]

At this time we are not extending the one filing satisfies all approach to encompass transactions involving the Securities Act and proxy rules as well as the tender offer and going-private rules. In the future, we may consider integrating the requirements further, to permit the satisfaction of the disclosure required under all four regulatory schemes with one filing.

We also are revising the rules that require filing persons to include a fair and adequate summary of the information required by the schedules in the disclosure document sent to security holders. Instead of specifying some items and excluding others, as the current rules do,[149] the revised rules simply require that the document given to security holders summarize all items in the schedule (except for exhibits).[150] As noted in the Proposing Release, this change is not intended to increase the amount of information that is given to security holders. Instead, it is intended to simplify the requirements. We expect filers to exercise their judgment in determining the specific information that must be included in the disclosure document sent to security holders to provide a fair and adequate summary. We are not, however, changing the current requirement that certain disclosure required in a going-private transaction be set forth in full in the disclosure document delivered to security holders.[151]

As a result of today's changes, filers no longer need to answer each item of the schedule with a statement that the required information is incorporated by reference from certain pages or sections of the primary disclosure document. Under the revised rules, it is sufficient to include a general statement in the schedule that all information in the disclosure document filed as an exhibit is incorporated by reference in answer to all or some of the items in the schedule. The revised schedules, as proposed, would include a cover page, any exhibits and the required signatures. Specific item numbers from the schedule must be included only to the extent necessary to provide information that is not in the disclosure document sent to security holders, but is required to be disclosed under an item in the schedule.[152] This change is designed to make the schedules easier to prepare. Of course, filers still must provide all the required information.[153]

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[141] One commenter urged us to codify the availability of a procedure for making acquisitions using securities registered on an acquisition shelf registration statement. While we are not codifying this procedure as part of this release, we remind offerors that the procedure continues to be available. *See* Form S–4, General Instruction H, and *Service Corporation International* (December 2, 1985).

[142] The format and instructions for Schedules 13E–3 and 14D–9 are revised so that they are consistent with new Schedule TO. These schedules refer to Regulation M–A for all substantive disclosure requirements. We did not propose, and are not adopting, any changes to the schedules used in connection with the multijurisdictional disclosure system for Canadian issuers (Schedules 13E–4F, 14D–1F and 14D–9F) (17 CFR 240.13e–102; 17 CFR 240.14d–102; 17 CFR 240.14d–103).

[143] New Schedule TO has boxes on the cover page to check to indicate whether the filing is an issuer tender offer, third-party tender offer, and/or going-private transaction. We are implementing conforming changes to the EDGAR filing tag system so that the type of transaction and filing persons are identified when viewing a document on EDGAR.

[144] For example, an affiliate engaged in a tender offer having a going-private effect can now file a Schedule TO that also serves as a Schedule 13E–3. All filing persons and applicable schedules must be identified on the cover page. Separate cover pages are not required. Of course, a Schedule 13E–3 must be filed independently when the underlying transaction is not a tender offer.

[145] Schedule TO also may be combined with an amendment to a previously filed Schedule 13D. *See* General Instruction G to Schedule TO. The ability to file a joint 13D amendment and tender offer statement is the same as currently permitted. *See* General Instruction E to Schedule 14D–1.

[146] General Instruction J to new Schedule TO.

[147] Documents filed electronically on EDGAR are readily available to security holders and the public (*e.g.*, through the Internet, our public reference room, brokers and investment advisors). This change also applies to going-private statements.

[148] General Instruction E to new Schedules TO and revised Schedule 13E–3 and General Instruction C to revised Schedule 14D–9.

[149] *See* current Rules 14d–6(e), 14d–9(c), 13e–3(e) and 13e–4(d) specifying the information that must be summarized or included in the disclosure document sent to security holders.

[150] Revised Rules 14d–6(d), 14d–9(d), 13e–3(e) and 13e–4(d).

[151] Items 7, 8 and 9 of current and revised Schedule 13E–3.

[152] For example, negative or ''not applicable'' responses or information that goes beyond what is summarized in the disclosure document must be disclosed under the appropriate item number in the schedule if not included in the disclosure document sent to security holders.

[153] *See* General Instructions E and F to new Schedule TO and revised Schedule 13E–3 and General Instructions C and D to revised Schedule 14D–9. We are eliminating the requirement in General Instruction F of current Schedule 13E–3 to

2. Streamline and Improve Required Disclosure

a. "Plain English" Summary Term Sheet

We proposed to require a plain English summary term sheet in all cash tender offers and all cash mergers, as well as going-private transactions. The disclosure documents in these transactions often can be difficult to understand, especially in the context of a business combination transaction where a vast amount of information may be available. We believe security holders should be provided with a concise, easy to read term sheet that highlights the most important and relevant information regarding an extraordinary transaction.

Accordingly, we are adopting the plain English summary term sheet requirement as proposed.[154] We are not adopting a plain English summary term sheet for transactions involving the registration of securities[155] because these transactions already are required to have a plain English summary, although the format may be somewhat different from the summary term sheet approach.[156] The summary term sheet must begin on the first or second page of the disclosure document, and must highlight the most important or material features of a proposed transaction.[157] This requirement applies to all issuer and third-party cash tender offers, cash mergers and going-private transactions. We believe the disclosure in these transactions can be improved through the use of a plain English summary term sheet.

In proposing this requirement, we did not mandate the specific items or questions that must be addressed in every case. Instead, we gave examples of information that most security holders would need when confronted with a tender offer or merger. Most commenters favored the proposed approach of keeping the requirement general and giving filers the flexibility to determine the issues that rise to the level of addressing in a plain English summary term sheet. We are adopting this approach.

As noted in the Proposing Release, in most cases, we believe bidders should address the following questions in the summary term sheet accompanying their cash tender offers:

- Who is offering to buy my securities?
- What are the classes and amounts of securities sought in the offer?
- How much is the bidder offering to pay and what is the form of payment?
- Does the bidder have the financial resources to make payment?
- Is the bidder's financial condition relevant to my decision on whether to tender in the offer?
- How long do I have to decide whether to tender in the offer?
- Can the offer be extended, and under what circumstances?
- How will I be notified if the offer is extended?
- What are the most significant conditions to the offer?
- How do I tender my shares?
- Until what time can I withdraw previously tendered shares?
- How do I withdraw previously tendered shares?
- If the transaction is negotiated, what does my board of directors think of the offer?
- Is this the first step in a going-private transaction?
- Will the tender offer be followed by a merger if all the company's shares are not tendered in the offer?
- If I decide not to tender, how will the offer affect my shares?
- What is the market value (if traded) or the net asset or liquidation value (if not traded) of my shares as of a recent date?
- Who can I talk to if I have questions about the tender offer?

As for merger proxy statements, we believe a summary term sheet should provide a brief outline of the particular matters proposed, the material terms of the proposals, including the parties to the proposed transaction, the consideration to be received by security holders, the board's recommendation on how to vote or their position regarding the transaction, the effect of a vote for and against each matter presented, including the effects of not voting, the procedures for voting and changing or revoking a vote, and the existence of appraisal rights.

Several commenters provided useful suggestions on other information that may assist security holders. We agree with these commenters that a plain English summary term sheet should address, to the extent applicable, the vote required to approve each matter presented, the number of votes, if any, already committed to vote in a particular way, any material interests of insiders or affiliates, as well as the accounting and federal income tax treatment of the transaction. In the context of a going-private transaction, we believe that the receipt of opinions, appraisals, or other similar reports[158] regarding the fairness of a transaction would be of material interest to security holders. In addition, the identity of the filing persons, including the affiliates engaged in the transaction, a description of their affiliation or relationship with the issuer, and their role in the transaction may be important disclosure. Of course, we do not attempt to provide an exhaustive list in this release of all the matters or issues that may be material to security holders warranting inclusion in a plain English summary term sheet. We leave that determination for filers based on the particular facts and circumstances of their transaction.

b. Item 14 of Schedule 14A Revised to Clarify Requirements and Harmonize Cash Merger and Cash Tender Offer Disclosure

Item 14 of Schedule 14A specifies the information required in proxy and information statements relating to extraordinary transactions.[159] We are revising Item 14 substantially as proposed, except that the revised item refers filers to the applicable disclosure requirements in Forms S–4 and F–4, instead of Forms C and SB–3, which are not being adopted at this time. This approach should make the item easier to understand, and harmonize the proxy and registration statement disclosure requirements. Since the disclosure and incorporation by reference requirements in Forms S–4 and F–4 are essentially the same as in current Item 14, this streamlined approach will not greatly modify the disclosure required in a merger proxy statement. We are retaining in Item 14 the existing

provide a cross-reference sheet showing where the responses are located.

[154] Item 1001 of Regulation M–A. For purposes of this requirement, plain English has the same meaning as in Rule 421(b) and (d).

[155] If a transaction is subject both to the registration requirements of the Securities Act and either Rule 13e–3 or the tender offer rules, a plain English summary term sheet is not required. *See* Item 1 of revised Schedule 13E–3 (17 CFR 240.13e–100) and new Schedule TO (17 CFR 240.14d–100).

[156] *See* Item 3 of Forms S–4 and F–4 and Rule 421(d) of Regulation C (17 CFR 230.421(d)). Effectiveness of a registration statement may be denied or a stop order issued when there has not been a bona fide effort to present information in a reasonably clear, concise and readable manner. *See* Rule 461(b)(1) of Regulation C (17 CFR 230.461(b)(1)); *see also, In the Matter of Franchard Corporation*, 42 S.E.C. 163 (1964).

[157] The required summary term sheet should present information in bullet-point format and may include cross-references to more detailed information found elsewhere in the disclosure documents provided to security holders, consistent with plain English principles.

[158] *See* current and revised Item 9 to Schedule 13E–3.

[159] 17 CFR 240.14a–101. Item 14 disclosure is required when a vote or consent is solicited on: (i) A merger; (ii) a consolidation; (iii) the acquisition of assets, a business or securities; (v) the sale or transfer of all or substantially all the assets of the registrant; (vi) a liquidation; or (vii) a dissolution. This item requires information about the transaction and each party to the transaction (*i.e.*, the acquiror and the target). The information specified in Item 14 may be incorporated by reference or physically included in the disclosure document depending on the extent to which the acquiror or target is eligible to use Form S–2 or S–3.

disclosure requirements applicable to investment companies.[160]

In addition, we are adopting several substantive changes regarding the information required for acquirors and targets under Item 14. All commenters that addressed the proposed changes to Item 14 believed they were appropriate. We continue to believe that in certain circumstances the disclosure requirements in Item 14 may be unnecessarily burdensome and inconsistent with the level of information that would be required if the same transaction was structured as an all-cash, all-share tender offer. Therefore, we are adopting the following proposed revisions:

- Item 14 is revised to clarify that financial statement and other information about the acquiror is required in a cash merger only if that information is material to voting security holders' evaluation of the transaction.[161] Similar to the need for a bidder's financial statements in a cash tender offer, information about the acquiror in a merger is generally not needed when target security holders are receiving cash and the acquiror has demonstrated its financial ability to satisfy the terms of the offer.[162]
- In cases where financial statement information for the acquiror would be material to a security holder's voting decision, acquiror information is required for only two years and not three, consistent with the treatment of tender offers.[163]
- The requirement to provide information about the target in a cash merger is eliminated when the acquiror's security holders are not voting on the transaction.[164] Most likely, target security holders will have information about the securities they already hold. As a result, security holders can receive a shorter disclosure document that is focused on the terms and effects of the transaction. This revision harmonizes the disclosure required in cash merger transactions with that required in all-cash, all-share tender offers.[165]

The changes adopted today do not change the current requirement to provide financial statements of the target and other company information when the acquiror's security holders are voting on the transaction, since those security holders may not know anything about the target. In addition, target information is required in merger proxies that are going-private or roll-up transactions. We believe that target security holders have a need for current financial statements of their company if it is subject to one of these types of transactions.

We are not adopting two proposed changes. Under the proposal, Item 14 would no longer permit information to be incorporated by reference from the ''glossy'' annual report sent to security holders. Further, we proposed to eliminate the instructions in Schedule 14A and Form S–4 that require filers to send the mandated disclosure document to security holders at least 20 business days before the meeting date or the expiration date of an exchange offer if information is incorporated by reference.[166] At this time we believe there still may be a number of security holders that do not have the ability to access information electronically, so we are not eliminating the 20 business day incorporation by reference provision.[167] We are retaining incorporation by reference from the glossy annual report because this information is delivered to security holders.[168]

c. Reduced Financial Statement Requirements for Non-Reporting Target Companies in Stock Mergers and Stock Tender Offers

The previous section addressed information requirements in cash mergers. We also have examined financial statement requirements in the context of stock mergers and stock tender offers. As we noted in the Proposing Release, financial statements of the target generally are required when registered securities are being offered. The rules currently provide special treatment when the target is not subject to the Commission's reporting requirements, but we believe these requirements can be further relaxed. Currently, the rules require the filing person (the acquiror) to provide financial statements of the non-reporting target going back three years.[169] We noted that providing three years of financial statements prepared in accordance with Regulation S–X[170] for a non-reporting company can be costly and burdensome to prepare. In some cases they may not be available. Therefore, we proposed to reduce the financial statements required for non-reporting targets when the acquiror's security holders are not being asked to vote on the transaction.

Most commenters believed that the proposed reduction was appropriate and would facilitate acquisitions of non-reporting targets. We continue to believe that the requirement to provide target financial statements can be curtailed, particularly because in many cases target security holders likely made their initial investment decision in the non-reporting company based on less extensive information than what is currently required. In addition, security holders are being offered securities in a public company for which there should be significantly more information available and a more liquid market to

[160] New Item 14(d) of Schedule 14A. We believe that this will be simpler for investment companies than referring to Forms S–4 and F–4, which generally are inapplicable to investment companies. We also have consolidated and conformed current Instructions 6 and 8 to Item 14 for investment companies. Instruction to paragraph (d) of Item 14 of Schedule 14A. The requirements that we are retaining for investment companies were not specifically tailored for investment companies, and we believe that it would be appropriate to reconsider these requirements in a future rulemaking project focused on the registration and disclosure requirements applicable to investment company business combination transactions.

[161] Revised Instruction 2(a) to Item 14 of Schedule 14A. Pro forma information about the transaction is not generally required in a cash merger where only the target's security holders are voting on the transaction.

[162] Even if the acquiror's security holders are voting, acquiror information may be omitted because the acquiror's security holders are presumed to have access to information about their own company. In this case, pro forma information about the transaction will still be required in accordance with Article 11 of Regulation S–X (17 CFR 210.11–01 through 17 CFR 210.11–03).

[163] Revised Item 14(c)(1) to Schedule 14A. If financial statements of the target are required, then three years of financial statements must be provided, consistent with the other requirements for financial statements of acquired companies.

[164] Revised Instruction 2(b) to Item 14 of Schedule 14A.

[165] No target information is required if target security holders are voting on a merger in which the consideration offered consists of acquiror securities that are exempt from Securities Act registration. Revised Instruction 3 to Item 14 of Schedule 14A.

[166] *See* Note D.3 to Schedule 14A; General Instruction A.2 to Form S–4; and General Instruction A.2 to Form F–4.

[167] We have stated that the 20 business day period must be complied with even if the documents incorporated by reference are delivered along with the disclosure document. *See* Release No. 33–6578 (April 23, 1985) (50 FR 18990) (Form S–4 adopting release). We are changing this interpretation. If filers furnish the information that is incorporated by reference with the disclosure document that is sent to security holders, they do not have to comply with the 20 business day requirement.

[168] Revised Item 14(e) to Schedule 14A (17 CFR 240.14a-101).

[169] *See* Item 17(b)(7) of Form S–4, Item 17(b)(5) of Form F–4 and Item 14(b)(3)(ii)(A) of Schedule 14A. These items specify the information required for non-reporting target companies in a business combination transaction. An acquiror must provide financial statements ''that would have been required to be included in an annual report to security holders'' had the non-reporting company been required to furnish an annual report that complies with Rule 14a–3(b) (17 CFR 240.14a–3(b)). This rule requires audited balance sheets for each of the two most recent fiscal years and audited statements of income and cash flows for each of the three most recent fiscal years prepared in accordance with Regulation S–X.

[170] The required balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. The required financial statements must be audited to the extent practicable.

sell into. Therefore, we are reducing the financial statement requirement substantially as proposed.[171] In addition, where the non-reporting target is not significant to the acquiror and the acquiror's security holders are not voting on the transaction, we believe the financial statement requirements can be reduced even further.

Accordingly, we are eliminating the requirement to provide financial statements for the non-reporting target altogether when the acquiror's security holders are not voting on the transaction and the non-reporting target is not significant to the acquiror above the 20% level.[172] The security holders that purchased securities in the non-reporting company generally would be aware that they invested in a company that is not subject to our reporting requirements and they would not expect to receive the same level of financial information that is required for a public reporting company. Moreover, if the non-reporting company is not significant to the acquiror, we believe security holders would likely rely on the financial statements of the acquiror in making their voting or investment decision. Because a combination of an insignificant non-reporting target company and a public acquiror should not materially alter the financial condition of the acquiror, we believe that non-reporting target security holders are likely to rely on the required acquiror financial information alone.[173] In addition, the 20% threshold is the standard adopted in 1996 for the requirement of audited financial statements in filings made under the Securities Act and the Exchange Act for business acquisitions.[174]

Accordingly, we are revising the financial statement requirements for non-reporting targets when the acquiror's security holders are not voting on the transaction,[175] as follows:

- If a non-reporting company is being acquired in a business combination transaction, then financial statements for the latest fiscal year prepared in conformity with generally accepted accounting principles (''GAAP'') must be provided.[176]
- Also, if the non-reporting target security holders were previously provided with GAAP financial statements for either or both of the two fiscal years before the latest fiscal year, then GAAP financial statements must be provided for those years as well.
- If the non-reporting target is not significant to the acquiror in excess of the 20% level, then no financial information is required for the target.[177]

These revisions apply equally to foreign and domestic non-reporting target companies. If the target's financial statements are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP (foreign GAAP), a reconciliation to U.S. GAAP is required unless a reconciliation is unavailable or not otherwise obtainable without unreasonable cost or expense.[178]

The current requirement to provide ''audited'' financial statements for the non-reporting target remains the same. Financial statements for the latest fiscal year must be audited only to the extent practicable. Audited financial statements are not required for years before the most recent fiscal year if the target's financial statements were not previously audited.

We are not changing the current requirement that a resale registration statement include audited financial statements in accordance with Rule 3–05 of Regulation S–X.[179] Also, to the extent that a transaction is significant to the acquiror, audited financial statements would ultimately need to be provided under Item 7 of Form 8–K. Of course, if the acquiror's security holders are voting on the transaction, then the current financial statement requirements apply.

G. Tender Offer Rules Updated

In addition to the changes discussed above, some of which affect tender offers, we proposed to update the tender offer rules, which have not been revised since 1986. For the most part, commenters favored our approach to updating the regulations. As a result, these changes are being adopted, substantially as proposed.[180] The significant changes are discussed below.

We also solicited comment on whether the Private Securities Litigation Reform Act of 1995 (''PSLRA'') safe harbor for forward-looking statements should be extended to tender offers. We are not extending the PSLRA safe harbor to tender offers at this time. Given the relative infancy of the body of law interpreting the PSLRA generally and the safe harbor in particular, we do not believe that extending the reach of the safe harbor would be prudent. We note, for example, that we recently filed an *amicus curiae* brief out of concern about certain language in an appellate court decision regarding the application of the safe harbor.[181]

1. Bidders May Include a ''Subsequent Offering Period'' Without Withdrawal Rights

We are adopting the subsequent offering period rule with several modifications described below. Under the new rules third-party bidders may provide, at their election, a subsequent offering period during which security holders can tender securities into the offer without withdrawal rights. The purpose of the subsequent offering period is two-fold. First, the period will assist bidders in reaching the statutory state law minimum necessary to engage in a short-form, back-end merger with the target. Second, the period will provide security holders who remain after the offer one last opportunity to tender into an offer that is otherwise complete in order to avoid the delay and illiquid market that can result after a tender offer and before a back-end merger.

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[171] Since we are not adopting Forms C and SB–3, these changes are implemented in amendments to Forms S–4 and F–4.

[172] Determination of the significance of an acquisition to the acquiror is made in accordance with Rule 3–05 of Regulation S–X (17 CFR 210.3–05). *See* Release No. 33–7355 (October 10, 1996) (61 FR 54509) and Rule 1–02(w) of Regulation S–X (17 CFR 210.1–02(w)).

[173] This change is consonant with our revisions to Item 14 to eliminate the requirement to provide target financial statements in cash mergers when the acquiror's security holders are not voting on the transaction and the information is not material to the target security holders' voting decision.

[174] In Release No. 33–7355, we streamlined the requirements with respect to financial statements for business acquisitions. Among other things, the amended rules raised the thresholds of significance that determine whether financial statements of an acquired business must be provided in filings. These rule changes were intended to reduce impediments to registered offerings that may have caused companies to undertake private or offshore offerings instead. We believe the significance threshold for non-reporting targets should be the same in Forms S–4 and F–4 as under our other financial statement requirements. We may, however, consider revisiting this issue in a broader context in a future rulemaking proposal that addresses what the significance thresholds should be in light of the current accounting environment.

[175] These changes do not affect the financial statements required in roll-up transactions.

[176] Revised Items 17(b)(7) of Form S–4 and 17(b)(5) of Form F–4.

[177] Under these facts pro forma and comparative per share information is not required. *See* Rule 11–01(c) of Regulation S–X (17 CFR 210.11–01(c)).

[178] At a minimum, however, a narrative description of the material variations in accounting principles, practices and methods used in preparing the foreign GAAP financial statements from those accepted in the U.S. is required.

[179] A resale registration statement is used to register the resale of securities to the public by anyone who is deemed an underwriter within the meaning of Rule 145(c) with respect to the securities being re-offered.

[180] As proposed, we are adopting a technical change to Rule 432, which requires the prospectus disseminated to security holders in connection with an exchange offer to include certain information specified by the tender offer rules. The revised rule also clarifies that the requirement includes issuer tender offers. *See* current Rule 13e–4(d)(iv). The requirement is moved to revised Rule 432.

[181] *See* Memorandum of the Securities and Exchange Commission, Amicus Curiae, at 2, *Harris* v. *Ivax Corp.*, No. 98–4818 (11th Cir. Aug. 1999) (partially supporting a petition for rehearing and rehearing *en banc in Harris* v. *Ivax Corp.*, 182 F.3d 799 (11th Cir. 1999)).

The subsequent offering period may be disclosed in the bidder's initial offering materials, or in a subsequent amendment to the tender offer materials that is disseminated to security holders. In either case, the bidder's determination to include a subsequent offering period must be disclosed sufficiently in advance of the expiration of the initial offering period.

Commenters generally were favorable to the proposal, but many commenters criticized the advance notice requirement. They expressed the view that advance notice would create a ''hold-out'' problem with security holders waiting until the subsequent offering period to tender shares. In response to these comments, we are not adopting a specific requirement in the rule that the determination to add a subsequent offering period must be disclosed before the end of the initial offering period. Nevertheless, we continue to believe at this time that the addition of a subsequent offering period once an offer has commenced would constitute a material change to the terms of that offer. Thus, bidders must disseminate the new information to security holders in a manner reasonably calculated to inform them of the change sufficiently in advance of the expiration of the initial offering period (generally five business days).[182] After the Division of Corporation Finance gains practical experience with the operation of the subsequent offering period, the Division may decide, through staff interpretation, to shorten or possibly eliminate the requirement for advance notice.[183]

In short, we are adopting new Rule 14d–11, which permits bidders to include a subsequent offering period in a third-party tender offer during which no withdrawal rights are available,[184] so long as:

- The offer is for all outstanding securities of the class sought;
- The initial offering period (with withdrawal rights) remains open for at least 20 business days;
- *All* conditions to the offer are deemed satisfied or waived by the bidder on or before the close of the initial offering period;[185]
- The bidder accepts and promptly pays for all securities tendered during the initial offering period on the closing of the initial offering period;
- The bidder announces the approximate number and percentage of outstanding securities that were deposited by the close of the initial offering period no later than 9:00 a.m. Eastern time on the next business day after the scheduled expiration date of the initial offering period; and
- The bidder immediately accepts and promptly pays for all shares as they are tendered in the subsequent offering period.[186]

The rule, as proposed and adopted, permits bidders to use a subsequent offering period in both cash and stock tender offers.[187] Similarly, the rule permits bidders to offer either cash or stock in any planned back-end merger. There is no specific requirement that a minimum number of shares be tendered in the initial offering period. Of course, the same consideration must be paid in both the initial and subsequent offering periods.[188]

The new rule includes a requirement that bidders announce the results of the initial offering period (including the number and percentage of securities tendered) before 9 a.m. on the next business day following the close of the initial offering period.[189] We believe an announcement is necessary to inform remaining security holders whether the offer was successful and whether or not a back-end merger is imminent. Because of this requirement to announce the results before 9 a.m. on the next business day, the subsequent offering period must begin on that day. This will avoid any delay in the offer between the initial offering period and the subsequent offering period. We believe that this will prevent any confusion in the market as to whether the offering period is still open.

We proposed conditioning the subsequent offering period on the bidder stating its intention to engage in a back-end merger with the target. Commenters addressing this issue did not believe that this requirement was necessary. We are not adopting this requirement because we believe security holders may benefit from a subsequent offering period whether or not the bidder intends a back-end merger transaction.

As proposed, Rule 14d–1(e)(8) would have defined the subsequent offering period as a ten business day period following the initial offering period. Several commenters, however, recommended that bidders be permitted to determine the duration of the subsequent offering period. In response to these comments, we have decided to adopt a more flexible approach to the subsequent offering period. New Rule 14d–11 will allow the subsequent offering period to be a minimum of three business days and a maximum of 20 business days. Bidders could opt for a relatively short subsequent offering period and later extend the period if necessary. Any extension of the subsequent offering period must be made in accordance with Rule 14e–1(d).[190]

2. Bidder Financial Information Clarified for Cash Tender Offers

a. When a Bidder's Financial Statements Are Not Required; Source of Funds

We are clarifying when financial statement information of the bidder must be disclosed in a cash tender offer.[191] Currently, this information is

[182] *See* Release No. 34–24296 (April 3, 1987) (52 FR 11458).

[183] If a bidder announces a subsequent offering period and later decides not to provide the period, clearly this would be a material change in the offer's terms that must be disclosed in advance as provided in Release No. 34–24296. Commenters did not disagree with this view.

[184] We also are amending Rule 14d–7 to provide an exemption so the withdrawal rights required by section 14(d)(5) of the Exchange Act (15 U.S.C. 78n(d)(5)), which apply 60 days after the start of a tender offer, are not available during a subsequent offering period.

[185] The subsequent offering period may *not* be used if payment will be delayed for any reason. In the past we have stated that payment may be delayed for certain governmental regulatory approvals. *See* Release No. 34–16623 (March 5, 1980) (45 FR 15521). A subsequent offering period, however, cannot be used unless *all* conditions to payment have been satisfied or waived and the bidder pays for all securities tendered in the initial offering period promptly after the close of the initial offering period. Likewise, there cannot be any conditions to the offer during the subsequent offering period.

[186] New Rule 14d–11(e) and revised Rule 14e–1(c).

[187] If a bidder offers cash and securities with a limit on the amount of cash or securities that may be paid to security holders, then a subsequent offering period may not be used. The imposition of a cap on one or the other form of consideration could result in proration which, as discussed in the Proposing Release, is why we limited the subsequent offering period to offers for all outstanding securities.

[188] The initial and subsequent offering periods are all part of one tender offer. If a different price were paid to security holders it would violate the all-holders best-price rules as well as the subsequent offering period rule. *See* new Rule 14d–11(f), current Rule 14d–10(a)(2) and Release No. 34–23421 (July 11, 1986) (51 FR 25873).

[189] In response to a question in the Proposing Release, two commenters favored such a requirement.

[190] 17 CFR 240.14e–1(d). For example, if a bidder elects to provide a three business day subsequent offering period, and later determines that a longer period is necessary, the bidder could extend the subsequent offering period by up to 17 business days. The bidder would, of course, need to announce the extension no later than 9:00 a.m. on the fourth business day after the initial offering period closed, and the total duration of the subsequent offering period could not exceed twenty business days.

[191] If a bidder offers securities instead of or in addition to cash, then financial statements are material. The registration statement form for the securities offered will specify the financial statements required. If the bidder offers securities that are exempt from registration, the financial statements specified in Schedule TO would be filed.

required in a cash tender offer when the information is material to a security holder's decision whether to tender, sell or hold.[192] The instructions in Schedule 14D–1 provide some guidance on when financial statement information is material.[193] These instructions also specify the type of information that will satisfy the financial statement disclosure requirement.[194]

We noted in the Proposing Release that generally there are several factors that should be considered in determining whether financial statements of the bidder are material. Those factors are as follows:

- The terms of the tender offer, particularly terms concerning the amount of securities sought, such as any-or-all, a fixed minimum with the right to accept additional shares tendered, all-or-none, and a fixed percentage of the outstanding;
- Whether the purpose of the tender offer is for control of the subject company; [195]
- The plans or proposals of the bidder; and
- The ability of the bidder to pay for the securities sought in the tender offer and/or to repay any loans made by the bidder or its affiliates in connection with the tender offer or otherwise.[196]

We also noted that these factors are not exclusive, and not all factors are necessary to meet the materiality test. In order to provide more guidance to bidders, we are adopting a new instruction to Schedule TO specifying when the financial statements of a bidder are not material and do not have to be provided. Commenters generally supported the proposal, offering some suggestions on how to modify the instruction so that it achieves its intended purpose. We are, therefore, adopting the instruction with some minor changes. We believe that under the circumstances specified in the new instruction, the burden of providing the bidder's financial information in tender offer materials may outweigh the usefulness of the information to security holders.[197]

As adopted, Item 10 to new Schedule TO [198] includes an instruction stating that a bidder's financial statement information is not material when:

- Only cash consideration is offered;
- The offer is not subject to any financing condition; and *either:*
- The bidder is a public reporting company that files reports electronically on EDGAR; *or*
- The offer is for all outstanding securities of the target.[199]

Several commenters addressed the financing condition element to the instruction. Most of these commenters indicated that the status of a bidder's financing arrangements (*e.g.*, commitment letter, definitive financing in place, or sufficient funds on hand) is not determinative so long as the offer is not subject to a financing condition. We agree. We believe security holders may need financial information for the bidder when an offer is subject to a financing condition so they can evaluate the terms of the offer, gauge the likelihood of the offer's success and make an informed investment decision. Whether an offer is conditioned on obtaining satisfactory financing arrangements (*e.g.*, receipt of a commitment letter or execution of other definitive financing documents) or the actual receipt of funds from a lender,[200] the offer is considered subject to a financing condition and the bidder may not omit financial information in reliance on the instruction.

We also asked whether foreign companies whose financial statement information may not be readily available should be treated any differently. Foreign companies are permitted to file reports in paper and are not required to file electronically.[201] As a result, security holders may have more difficulty obtaining information for foreign bidders. Two commenters indicated that foreign bidders that file reports (*e.g.*, Form 20–F) [202] in paper should not be able to satisfy the third prong of the instruction. We agree that the instruction should take into account the availability of financial statement information for foreign bidders. If information is available on EDGAR (via the Internet and other sources), we believe there is less need to require disclosure of the bidder's financial statements in its tender offer materials. Therefore, we have revised this condition to state that the bidder must be a reporting company that files reports electronically on EDGAR.[203] Of course, foreign bidders that choose to file reports electronically on EDGAR can rely fully on this new instruction. Alternatively, a bidder that is non-reporting or files reports in paper may rely on the instruction if the offer is for all outstanding securities of the target.[204]

We also proposed to codify the current practice of providing net worth information when the bidder is a natural person. The one commenter that addressed this proposal supported it, but believed the requirement to provide ''appropriate disclosure'' when a bidder's net worth is derived from material amounts of assets that are not readily marketable or there are material guarantees and contingencies was too vague. Therefore, we are adopting this instruction, substantially as proposed, but with a clarification that the bidder must disclose the nature and approximate amount of the individual's net worth consisting of illiquid assets and the magnitude of any guarantees or contingencies that may negatively affect the natural person's net worth.[205] We believe this information is useful to security holders in evaluating a tender offer made by a natural person.

Regardless of the level of financial information that security holders

[192] Item 9 of Schedule 14D–1 and Item 7 of Schedule 13E–4.

[193] Instruction 1 to Item 9 of Schedule 14D–1.

[194] Rules 14d–6(e) (17 CFR 240.14d–6) and 13e–4(d) (17 CFR 240.13e–4(d)).

[195] Financial information can be material when a bidder seeks to acquire the entire equity interest of the target and the bidder's ability to finance the transaction is uncertain. Financial information also can be material when a bidder seeks to acquire a significant equity stake in order to influence the management and affairs of the target. In the latter case, security holders need financial information for the prospective controlling security holder to decide whether to tender in the offer or remain a continuing security holder in a company with a dominant or controlling security holder.

[196] Release No. 34–13787 (July 21, 1977) (42 FR 38341).

[197] We are not changing bidders' ability to incorporate by reference financial information into their tender offer materials. *See* Instruction 3 to Item 10 of new Schedule TO.

[198] Although proposed Item 10 to Schedule TO did not specifically address the need to provide financial information for a controlling entity that forms an entity for the purpose of making a tender offer, we have revised Item 10 consistent with the requirements currently in Item 9 to Schedule 14D–1. If a bidder is formed by a controlling person for the purpose of making an offer, then financial information for the parent must be provided.

[199] Instruction 2 to Item 10 of new Schedule TO.

[200] The same analysis applies for non-reporting bidders, such as private investors, partnerships or private equity funds. These private bidders often finance their tender offers with funds raised from limited partners through a process known as a ''capital call.'' If the private bidder's offer is conditioned on obtaining funds from limited partners, security holders or other members of the entity, the offer is deemed subject to a financing condition.

[201] Rule 100(a) of Regulation S–T (17 CFR 232.100).

[202] 17 CFR 249.220f.

[203] This prong of the instruction will not be deemed satisfied if the bidder's financial statement information is not available on the EDGAR system (*e.g.*, because the bidder is delinquent in its reporting obligations or the bidder has filed this information in paper under a hardship exemption).

[204] To the extent financial statements of a foreign bidder are required and are prepared under foreign GAAP, a reconciliation to U.S. GAAP is required unless a reconciliation is unavailable or not otherwise obtainable without unreasonable cost or expense. As noted above in Part II.F.2.c, bidders must provide, at a minimum, a narrative description of the material variations in accounting principles, practices and methods used in preparing the foreign GAAP financial statements from those accepted in the U.S. *See* n.178 above.

[205] Instruction 4 to Item 10 of new Schedule TO.

receive, a bidder's ability to pay for the securities is a material disclosure item. We believe the disclosure that security holders currently receive in this area can be improved by clarifying the ''Source of Funds'' item requirement for tender offers and going-private transactions. As proposed, we are revising this item to require disclosure of information regarding the specific sources of financing, any conditions to the financing, and the filing person's ability to finance the transaction through alternative means if the primary source of financing should fall through.[206]

b. Content of Bidder's Financial Statements in Cash Tender Offers; Financial Statements in Going-Private Transactions

In the Proposing Release we noted the disparity in the financial statements required in third-party tender offers, issuer tender offers, and going-private transactions. We are reducing the financial statement information required in third-party tender offers as proposed. This change harmonizes the requirements with those for issuer tender offers and going-private transactions.[207] The commenters that addressed this proposal supported it. We believe that the burden of providing three years of historical financial statements in a third-party cash tender offer outweighs the benefit to security holders.[208]

We also proposed to update the disclosure requirements for tender offers and going-private transactions. Currently, information regarding book value per share and the pro forma effect of the transaction on the company's balance sheet and book value per share (as of the most recent fiscal year end and the latest interim balance sheet period) may be required. We are reducing the required information, as proposed, to only the most recent balance sheet date.[209]

In addition, when financial statement information is required in tender offer and going-private transactions, the current rules permit filers to include summary financial information,[210] instead of full financial statements, in the disclosure documents sent to security holders. We proposed to update the summary information requirements to consist of the summarized financial information specified in Rule 1–02(bb) of Regulation S–X[211] as well as ratio of earnings to fixed charges, book value per share and pro forma data. The two commenters that addressed this proposal indicated that the additional information (redeemable preferred stock, minority interests, unconsolidated subsidiaries and 50 percent or less owned persons) called for by Rule 1–02(bb) is not relevant or useful to security holders, especially in cash tender offers.

In response to their concern, we have revised the summary requirement so that information regarding unconsolidated subsidiaries and 50 percent or less owned persons is not required. We continue to believe, however, that the information specified in Rule 1–02(bb)(1) (redeemable preferred stock and minority interests) may be relevant when the bidder's financial information is material[212] and the bidder elects to provide summary instead of full financial statements in the disclosure document sent to security holders. Under the current rules a fair and adequate summary includes ''shareholders'' equity.'' The additional specificity provided by Rule 1–02(bb)(1) is not inconsistent with the current requirements. Also, information regarding the existence of minority interests may be material to security holders if the filing person (bidder) holds substantial assets or derives substantial revenues from a consolidated subsidiary that is not wholly-owned. Accordingly, we do not believe that updating the disclosure requirements to reference the information specified in Rule 1–02(bb)(1) will result in the disclosure of irrelevant information. As this information may be material to security holders, we adopt an updated definition of summary financial information that is substantially as proposed.[213] These revisions also extend to third-party tender offers the requirement to disclose book value information when that information is material.[214]

We also proposed to clarify the reconciliation required when non-U.S. GAAP financial statement information is summarized in a foreign bidder's disclosure document. We believe that summary financial information must include a reconciliation to the same extent full financial statements must include a reconciliation to U.S. GAAP.[215] This reconciliation requirement is consistent with that required for the acquisition of a foreign non-reporting target company with foreign GAAP financial statements.[216]

c. Pro Forma Financial Information Required in Two-Tier Transactions

We believe security holders need pro forma financial information for a bidder and target on a combined basis when deciding whether or not to tender in the first tier of a two-tier transaction.[217] Security holders need pro forma financial information to make an informed investment decision because if security holders do not tender in an offer they may receive securities of the bidder in exchange for the securities they hold in the target at a later date in a back-end securities transaction. Bidders frequently disclose information regarding expected synergies and other financial information to effectively sell their transaction to the market. We believe that pro forma information may be necessary to balance the disclosure disseminated to security holders and the markets. In addition, disclosure of pro forma financial information is generally consistent with our free communications scheme.[218] We are, however, adopting a slightly less burdensome pro forma requirement than proposed in response to some of the concerns expressed by commenters.[219]

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[206] Item 1007 of Regulation M–A.

[207] When securities are offered the registration statement requirements prevail. *See* n.191 above. We also are reducing the financial statements required for acquiring companies in merger proxy statements from three to two years. *See* Part II.F.2.b above.

[208] Item 10 to Schedule TO and Item 1010(a) and (b) of Regulation M–A, as adopted, require financial statements for two fiscal years when the information is material.

[209] Item 1010(a)(4), (b)(1) and (3) of Regulation M–A. As proposed, this change also applies to merger proxy statements.

[210] *See* Rule 14d–6(e)(1)(viii) (17 CFR 240.14d–6(e)(1)(viii)); Instruction B to Rule 13e–4(d)(1)(iv) (17 CFR 240.13e–4(d)(1)(iv)); and Instruction 2 to Rule 13e–3(e)(3) (17 CFR 240.13e–3(e)(3)).

[211] 17 CFR 210.1–02(bb).

[212] *See* Part II.G.2.a above discussing when financial statement information is material.

[213] Item 1010(c) of Regulation M–A, Instruction 1 to Item 13 of revised Schedule 13E–3, Instruction 6 to Item 10 of new Schedule TO.

[214] Item 1010(a)(4), (b)(3) and (c)(5) of Regulation M–A.

[215] *See* Part II.G.2.a above.

[216] *See* Part II.F.2.c above.

[217] A ''two-tier transaction'' is a business combination structured as a cash tender offer followed by a back-end securities transaction, typically a merger, where remaining security holders of the target receive the bidder's securities as consideration.

[218] A requirement to disclose pro forma financial information in the first tier of a two-tier transaction extends the Division of Corporation's interpretive position that disclosure of certain material information known to the bidder regarding a planned back-end securities transaction would not result in ''gun-jumping'' under the Securities Act. *See* n.23 above.

[219] Instruction 5 to Item 10 of new Schedule TO. This instruction requires bidders to provide the financial data specified in Item 3(f) (comparative historical and pro forma per share data) and Item 5 (pro forma financial information required by Article 11 of Regulation S–X) of Form S–4 in the Schedule filed with the Commission. Bidders may

Three commenters generally supported the proposed pro forma requirement, expressing different views on the appropriate level of pro forma financial information and the circumstances under which the information should be required. Two commenters believed that the pro forma requirement would be burdensome and provide only a marginal benefit to security holders. Several commenters noted that external factors may affect a bidder's ability to prepare pro forma financial information in compliance with the proposed requirement. Some of these factors include: the lack of any agreement with the target regarding the type and amount of consideration to be offered to security holders in any back-end securities transaction; the hostile or negotiated nature of the transaction; and the results of the tender offer.

We recognize that it may be more difficult for bidders to prepare accurate and complete pro forma financial information when the target is not cooperating with the bidder. We also realize that bidders may decide later not to offer securities in a back-end transaction for a number of reasons. Nevertheless, to the extent that a bidder, at the time of the cash tender offer, intends to offer securities in a back-end securities transaction with the target, we believe such information would be material to target security holders.[220] In addition, bidders that intend to offer securities in a back-end transaction would most likely have prepared some level of pro forma financial information on the combined entity for their own negotiating and planning purposes. As a result, we do not believe the requirement to provide pro forma financial information should be unduly burdensome for the bidder. Therefore, we are adopting a requirement that bidders disclose pro forma financial information prepared in accordance with Article 11 of Regulation S–X, in addition to historical financial statements,[221] when they intend to engage in a back-end securities transaction following a cash tender offer.[222] We limit this requirement, however, in two important respects.

First, the requirement is limited to ''negotiated'' transactions (*i.e.*, management of the target is cooperating with the bidder). Generally, in negotiated transactions, bidders have access to internal financial information of the target necessary to prepare pro forma financial information.[223] In transactions where the bidder does not have access to the internal information necessary to prepare reliable pro forma financial information in compliance with Article 11 of Regulation S–X (*i.e.*, non-negotiated transactions), we are not requiring pro forma financial information. However, we encourage bidders to provide pro forma or other similar financial information that they consider useful and meaningful to security holders, regardless of whether the transaction is negotiated or not.

Second, if an acquisition of a target is not significant to the bidder, we do not believe that pro forma financial information for the transaction would be helpful to security holders. Therefore, we are only requiring bidders to disclose pro forma financial information in a first-step tender offer when the acquisition is significant above the 20% level.[224]

3. Target Is Required To Report Purchases of Its Own Securities After a Third-Party Tender Offer Is Commenced

Rule 13e–1 prohibits an issuer whose securities are the subject of a third-party tender offer from repurchasing any of its equity securities until information about the intended acquisition is filed and disseminated to security holders. We proposed to clarify the timing of the disclosure called for by the rule so that the required information is disclosed only *after* a third-party tender offer is made, when it is most relevant. We also proposed to rewrite the rule in plain English. We are now adopting the revised rule as proposed, but without a requirement to send information to security holders. We also provide an exclusion from the rule for periodic repurchases in connection with employee benefit plans and other similar plans that are made in the ordinary course and not in response to the third-party offer.

Several commenters suggested that we rescind Rule 13e–1 based on the relatively low number of filings received during the past several years. Although few filings are made under the rule,[225] we continue to believe that the requirement serves the useful purpose of informing the marketplace in advance that an issuer plans to repurchase its own equity securities in response to a third party tender offer. While some of the information required by the rule may be provided in Schedule 14D–9, that schedule could be filed as late as ten business days after commencement of a third-party offer. Therefore, we are adopting the rule substantially as proposed, but as a filing requirement only. The information would not be required to be sent to security holders.[226] This will eliminate the cost to issuers of mailing the information, but the information will be publicly available to the marketplace.

4. Tender Offer and Proxy Rules Relating to the Delivery of a Security Holder List and Security Position Listing Harmonized

We are adopting as proposed revisions to Rule 14d–5 to conform the tender offer dissemination requirements with the proxy dissemination requirements in Rule 14a–7.[227] The revised rule expands the scope of information included in a security holder list under the tender offer rules so that it is consistent with the security holder list requirements in the proxy rules. Under the revised rule, a target company that elects to provide a bidder with a security holder list instead of mailing the bidder's materials to security holders must disclose the most recent list of names, addresses and security positions of non-objecting beneficial owners (as well as record holders) it has in its possession, or subsequently obtains. The security holder list must be in the format requested by the bidder if it can be provided without undue burden or expense. The purpose of the amendment to the rule is to give bidders the same

provide only the summary financial information specified in Item 3(d), (e) and (f) of Form S–4 in the disclosure document sent to security holders.

[220] A bidder that intends to engage in a back-end securities transaction may not avoid the disclosure requirement by not disclosing its intentions because non-disclosure could be a material omission that renders other statements by the bidder false and misleading.

[221] The bidder must disclose the historical financial statements specified in Item 1010 of Regulation M-A. See Instruction 5 to Item 10 of new Schedule TO. Historical financial information for the bidder is necessary to present the pro forma financial information in context.

[222] The pro forma financial information requirement applies whether the first step is a partial offer or an offer for all outstanding securities. In both cases, a bidder could intend to engage in a back-end securities transaction with the target.

[223] As required by Article 11, the pro forma financial information disclosed in the first tier must be accompanied by clear and explanatory footnotes that address the nature of all material pro forma adjustments.

[224] Determination of the significance of an acquisition to the acquiror is made in accordance with Rule 3–05 of Regulation S–X. See Release No. 33–7355 (October 10, 1996).

[225] There is no schedule or form accompanying the rule. The required information is disclosed in a ''Rule 13e–1 Transaction Statement'' filed electronically on EDGAR under the submission-type SC 13E1.

[226] If a target is making an issuer tender offer and complies with the filing, disclosure and dissemination requirements of Rule 13e–4 before repurchasing any securities, the requirements of Rule 13e–1 would be satisfied without a separate Rule 13e–1 filing.

[227] 17 CFR 240.14a–7.

ability as target companies to communicate directly with non-objecting beneficial owners of securities.

Most commenters supported the proposal, with one commenter expressing concern on the mechanics of tracking transmittal letters. We do not believe that the revised rule would unduly complicate the tender process or the tracking of transmittal forms. Bidders would mail their tender offer materials to record holders, consistent with current practice, and record holders would then forward the materials to beneficial owners. Bidders also would have the option of supplementing their distribution by mailing directly to non-objecting beneficial owners set forth on the security holder list provided by the target. Transmittal forms would include instructions, as they do today, stating where to send transmittal forms (*e.g.*, forms should be returned to the record holder with directions to tender shares in the offer).

5. New Rule 14e–5: Revision and Redesignation of Former Rule 10b–13, the Rule Prohibiting Purchases Outside an Offer

Rule 10b–13 prohibits a person who is making a cash tender offer or exchange offer from purchasing or arranging to purchase, directly or indirectly, the security that is the subject of the offer (or any security that is immediately convertible into or exchangeable for the subject security), otherwise than as part of the offer. We proposed to clarify the rule's text, codify several interpretations and exemptions, and redesignate it as new Rule 14e–5. We are adopting the amendments substantially as proposed. In response to commenters' suggestions, we are adopting four additional exceptions. We also are implementing the changes proposed in the cross-border tender offers proposing release since those proposals are being adopted today.[228] With these two further exceptions regarding cross-border offers adopted today,[229] Rule 14e–5 has ten exceptions.

a. Redesignating Rule 10b–13 as Rule 14e–5

Former Rule 10b–13 is redesignated as Rule 14e–5. We originally promulgated Rule 10b–13 under Sections 10, 13 and 14 of the Exchange Act[230] to safeguard the interests of persons who sell their securities in response to a tender offer.[231] As stated in the Proposing Release, because the rule addresses conduct during tender offers, we believe it belongs with the other rules under Regulation 14E under the Exchange Act that address activities in the context of tender offers.[232] No commenters disagreed with this change, and we are adopting it as proposed.[233]

b. Clarification of Rule 14e–5; Prohibited Period

The amendments to Rule 14e–5 being adopted today do not alter the rule's basic terms. Instead, they modify the rule's text to more clearly set forth the covered activities. Rule 14e–5 will continue to protect investors by preventing an offeror from extending greater or different consideration to some security holders outside the offer, while other security holders are limited to the offer's terms.[234] Rule 10b–13 prohibited a person who is making a cash tender offer or exchange offer from purchasing or arranging to purchase, directly or indirectly, the security that is the subject of the offer (or any security that is immediately convertible into or exchangeable for the subject security), otherwise than as part of the offer. Similarly, Rule 14e–5 prohibits a covered person from purchasing or arranging to purchase any subject securities or any related securities except as part of the tender offer. Rule 14e–5 does not explicitly include the term ''exchange offer'' as former Rule 10b–13 did because in Regulation 14E the term ''tender offer'' includes offers to exchange securities for cash and/or securities.[235]

We are changing the language describing the time period of the rule's restrictions. As adopted, the restrictions of Rule 14e–5 start upon ''public announcement,'' which is defined in the rule as any oral or written communication by the offeror, or any person authorized to act on the offeror's behalf, that is reasonably designed to, or has the effect of, informing the public or security holders in general about the tender offer.[236] Although the language regarding the commencement of the rule's restrictions is different from the language in Rule 10b–13,[237] the scope is the same; the restrictions apply from the time holders of the subject securities, or the public more generally, are notified of the tender offer.[238]

We are adopting the proposed simplification of the language regarding the end of the rule's restrictions. Under Rule 14e–5, the restrictions end when the offer expires.[239] Under Rule 14d–11, a tender offer may be extended up to 20 days under specific circumstances without offering withdrawal rights,[240] thus giving security holders an additional opportunity to tender into the offer.

As adopted, Rule 14e–5 does not apply to purchases or arrangements to purchase outside of a tender offer during a subsequent offering period if the consideration is the same in form and amount. In the Proposing Release, we said we believed offeror purchases outside the offer during this subsequent offering period present the same concerns as during the initial offering period; therefore, we proposed that Rule 14e–5 restrictions would cover any subsequent offering period provided under proposed Rule 14d–11. Two commenters agreed with the proposal, and two others thought the rule should

[228] *See* Release No. 34–40678 (December 15, 1998 (63 FR 69136)) (the ''Cross-Border Proposing Release'') and the Cross-Border Adopting Release.

[229] These additional exceptions, one for purchases during cross-border tender offers and one for purchases by ''connected exempt market makers'' and ''connected exempt principal traders,'' are discussed in the Cross-Border Proposing and Adopting Releases.

[230] 15 U.S.C. 78j; 15 U.S.C. 78m; 15 U.S.C. 78n.

[231] Release No. 34–8712 (October 8, 1969) (34 FR 15836) (the ''Rule 10b–13 Adopting Release'').

[232] Section 14(e) of the Exchange Act confers on the Commission the authority to define and prescribe means to prevent fraudulent, deceptive, or manipulative acts or practices in connection with any tender offer. *See United States* v. *O'Hagan*, 117 S. Ct. 2199, 2217 (1997) (holding that ''under section 14(e), the Commission may prohibit acts, not themselves fraudulent under the common law or section 10(b), if the prohibition is 'reasonably designed to prevent . . . acts and practices (that) are fraudulent''' (*citing* 15 U.S.C. 78n(e)).

[233] As proposed, we are amending Rule 30–3 delegating exemptive authority to the Director of the Division of Market Regulation, and replacing references to Rule 10b–13 with Rule 14e–5. We also are adding a parallel provision to Rule 30–1 (17 CFR 200.30–1) to delegate exemptive authority to the Director of the Division of Corporation Finance, and by operation of Rule 30–5(b) (17 CFR 200.30–05(b)), to the Director of the Division of Investment Management. The amended text of Rule 30–1 appears in the Cross-Border Adopting Release.

[234] *See* Rule 10b–13 Adopting Release.

[235] *See* n.12 above.

[236] *See* new Rule 165(f)(3) and revised Rules 13e–4(c) and 14d–2(b).

[237] Rule 10b–13 applies from the time the offer is publicly announced or otherwise made known to security holders until the offer expires. The phrase ''otherwise made known'' means any form of communication, other than public announcement, that notifies holders of subject securities of an offer.

[238] We asked whether the rule should apply if the offeror advises some but not all security holders that it intends to conduct a tender offer for the subject securities. Two of the three commenters that addressed this point believed that a communication to some security holders should not commence the restricted period. These two commenters opposed any such change because it would make negotiations impossible without triggering the rule. We agree with these commenters in that it is not appropriate for private negotiations that do not notify security holders more generally to trigger the rule.

[239] Expiration includes termination by the offeror as well as reaching the time the offeror is required, by the offer's terms, either to accept or reject the tendered securities.

[240] *See* Part II.G.1 above.

not extend to a subsequent offering period so long as the purchase price does not exceed the offer price. We now believe that the requirements of Rules 14d–11 and 14e–5 are sufficient to avoid any of the problems that Rule 14e–5 is designed to prevent. More specifically, under the terms of Rule 14e–5, any purchases made outside the offer during the subsequent offering period must be made using the same form and amount of consideration offered in the tender offer. Also, under the terms of Rule 14d–11, the offeror must immediately accept and promptly pay for all securities as they are tendered in the subsequent offering period, which eliminates any difference in the time value of money between those who tender and those who sell to the offeror outside the offer. Under these conditions, we believe those people who tender during a subsequent offering period will not be disadvantaged in relation to those whose securities are purchased outside of, but during, a subsequent offering period.

c. Persons and Securities Subject to the Rule

Scope of Persons Subject to the Rule

Rule 10b–13 applied to the person who made the offer, which had been interpreted to cover the offeror, the offeror's affiliates, and the offer's dealer-manager.[241] Under Rule 14e–5, the Rule 10b–13 term ''person'' is replaced by ''covered person'' to codify this interpretation. The definition of ''covered person'' we are adopting has several changes from the proposed definition. The proposal defined a covered person as: The offeror and its affiliates; the offeror's dealer-manager(s) and other advisors; and any person acting, directly or indirectly, in concert with them. Two commenters objected to including all advisors within the meaning of covered person as too broad. We agree, and have narrowed the scope of the advisor category.

Covered person, as adopted, means: The offeror and its affiliates; the offeror's dealer-manager and its affiliates; any advisor to the offeror, dealer-manager or their affiliates, if such advisor's compensation is dependent on the completion of the offer; and any person acting, directly or indirectly, in concert with any of the other covered persons in connection with any purchase or arrangement to purchase any subject securities or any related securities.[242] These changes replace the broader proposed term ''other advisors'' with two narrower categories: affiliates of the dealer-manager; and advisors to the offeror, dealer-manager or their affiliates, if such advisor's compensation is dependent on the completion of the offer. These changes mean that advisors such as attorneys and accountants will not be affected by the rule where they have no stake in the outcome of the offer.

The proposed definition of an affiliate borrowed heavily from the definition in Rule 12b–2.[243] As proposed in Rule 14e–5, the term meant any person that ''directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the offeror.'' The only distinction between the two definitions is that the proposed Rule 14e–5 definition was limited to affiliates of the offeror whereas, Rule 12b–2 extends to the affiliate of other relevant persons.[244] In order to accommodate other changes from proposed Rule 14e–5,[245] we needed to broaden this definition to include affiliates of the dealer-manager as well as the offeror, so we are adopting the entire definition of affiliate in Rule 12b–2.

Scope of Securities Subject to the Rule

We are adopting the proposed changes from Rule 10b–13 regarding the scope and treatment of related securities in the definitions of subject securities and related securities. Rule 14e–5 applies only to offers for equity securities, just as Rule 10b–13 did. Moreover, Rule 14e–5, as with Rule 10b–13, prohibits purchases outside the offer of not only the subject securities,[246] but also related securities. ''Related securities'' are defined as securities that are immediately convertible into, exchangeable for, or exercisable for subject securities. Among other things, this clarifies that securities that are immediately ''exercisable for'' subject securities, such as options, are included in the types of securities that a covered person cannot generally purchase outside the offer.

d. Excepted Transactions

Exercise of Related Securities

Rule 10b–13 specified that if the person making the offer ''is the owner of another security which is immediately convertible into or exchangeable for the security which is the subject of the offer, his subsequent exercise of his right of conversion or exchange with respect to such other security shall not be prohibited by this rule.'' We are amending this provision as proposed.

When Rule 10b–13 was adopted, options were not nearly as common as they are today, and the text of this exception did not explicitly include the exercise of options. We believe the exercise of options acquired before announcement of the offer is no more likely to lead to undesirable effects than the exchange or conversion of other related securities, so we want to make it clear that the exercise of options is included in this exception. Thus, Rule 14e–5 will permit, as proposed, a covered person to convert, exchange, or exercise related securities, if the covered person owned the related securities before public announcement.

Purchases by or for Plans

The exception for purchases for plans is adopted as proposed. Since the adoption of Rule 10b–13, there has been an exception for purchases by the issuer of the target security (or a related security) under certain types of plans, by participating employees of the issuer or the employees of its subsidiaries, or by the trustee or other person acquiring the security for the account of the employees.[247] We are eliminating the references to outdated Internal Revenue Code provisions that were contained in Rule 10b–13 to define permissible plan purchases; instead, we are using the more expansive plan scope contained in the Commission's Regulation M. The exception now permits purchases of subject securities or related securities for any ''plan'' if the purchases are made by an ''agent independent of the issuer'' as these terms are defined in Regulation M.

Purchases during Odd-Lot Offers

We are adopting the proposed exception to permit purchases during an issuer odd-lot tender offer conducted in compliance with the provisions of Rule

[241] *See, e.g., Letter regarding Offers for Smith New Court PLC* (July 26, 1995) (''Smith New Court Letter''). *See also In the Matter of Trinity Acquisition's Offer to Purchase the Ordinary Shares and American Depositary Shares of Willis Corroon Group plc*, Release No. 34–40246 (July 22, 1998) [67 S.E.C. Docket 1320].

[242] In a negotiated transaction, we would consider the target company to be acting in concert with the offeror.

[243] 17 CFR 240.12b–2.

[244] Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2) defines an ''affiliate'' of, or a person ''affiliated'' with, a specified person, as a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

[245] *See, e.g.*, Part II.G.5.d. below, where we extend the exception for intermediary transactions to include affiliates of the dealer-manager.

[246] ''Subject securities'' are defined in Item 1000 of Regulation M–A as ''the securities or class of securities that are sought to be acquired in the transaction or that are otherwise the subject of the transaction.''

[247] 17 CFR 240.10b–13(c).

13e–4(h)(5) under the Exchange Act.[248] This exception codifies a class exemption from Rule 10b–13 issued by the Commission in connection with a 1996 revision to Rule 13e–4(h)(5).[249] Under Rule 13e–4(h)(5), an issuer tender offer is excepted from application of Rule 13e–4 if the offer is directed solely to odd-lot security holders and provides ''all holders'' and ''best price'' protections to tendering security holders.

Purchases as Intermediary

We proposed to add an exception for unsolicited purchases by a dealer-manager that are made on an agency basis. We based this exception on a prior exemption [250] that allowed a dealer-manager to continue to conduct its customary brokerage (*i.e.*, agent) activities during a tender offer. These activities generally do not raise the concerns that proposed Rule 14e–5 is intended to address. In the Proposing Release, we asked if the exception should permit ''riskless principal'' transactions by dealer-managers as well. Two commenters answered this question and both agreed that the exception should be broadened to permit unsolicited purchases as a riskless principal by dealer-managers. One of the two thought it should extend to other financial advisors.

As adopted, we are broadening this exception in two ways from the proposal. First, we are including affiliates of the dealer-manager within the exception. Second, in addition to agency transactions, we are permitting purchases to offset a contemporaneous sale after having received an unsolicited order in the ordinary course of business to buy from a customer who is not a covered person, if the dealer-manager or affiliate is not a market maker.[251] We believe these changes appropriately accommodate a dealer-manager's and its affiliates' activities as intermediary without allowing the offeror to use the dealer-manager and its affiliates to facilitate the tender offer.

e. Additional Exceptions Being Adopted

We are adopting four exceptions that were not proposed specifically, although we either sought comment in the Proposing Release or received suggestions from commenters on them.

Purchases Pursuant to Contractual Obligations

In the Proposing Release, we asked whether an offeror should be permitted to purchase subject or related securities outside an offer if a purchase contract was entered into before public announcement of the offer and the per share purchase price is no higher than the offer consideration. Four commenters addressed this issue, and all agreed such purchases should be permitted. One commenter stated that it could not discern any public policy rationale for permitting purchases pursuant to conversions, exchanges or exercises but not pre-announcement contracts. We agree with the commenters.

As adopted, this exception is available only if: the contract was entered into before public announcement; the contract is unconditional and binding on both parties; and the existence of the contract and all material terms, including quantity, price and parties, are disclosed in the offering materials.[252] We are not requiring that the contract price be the same as the offer price because we view these contracts as the functional equivalents of options that have no such price restriction for their exercise under Rule 14e–5.

Basket Transactions

In response to a commenter's suggestion, we are adopting an exception for transactions in baskets of securities containing a subject security or a related security.[253] We are requiring that: the purchase or arrangement to purchase the basket be made in the ordinary course of business and not to facilitate the offer; the basket contains 20 or more securities; and covered securities and related securities do not comprise more than 5% of the value of the basket.[254]

We believe that transactions in baskets, following the terms of this exception, provide little opportunity for a covered person to facilitate an offer or for a security holder to exact a premium from the offeror. Facilitation of an offer includes purchases intended to bid up the market price of the covered or related security, and includes buying a basket to strip out the covered security in an effort to get the offeror the number of shares it is seeking.

Covering Transactions

In response to a commenter's suggestion, we are adopting an exception from Rule 14e–5 for purchases of subject and related securities that are made to satisfy an obligation to deliver arising from a short sale or from the exercise of an option by a non-covered person. This exception is available to any covered person, so long as the short sale or option transaction was made in the ordinary course of business, not to facilitate the tender offer, and before public announcement. We adopt this exception because we believe such purchases effected for the purpose of making delivery to another party warrant the same treatment as purchases made pursuant to contractual obligations.

Purchases by an Affiliate of the Dealer-Manager

In response to a commenter's suggestion, we are adopting an exception from Rule 14e–5 for purchases of subject and related securities by an affiliate of the dealer-manager.[255] This exception permits purchases or arrangements to purchase by an affiliate of a dealer-manager if:

- The dealer-manager maintains and enforces written policies and procedures reasonably designed to prevent the flow of information to or from the affiliate that might result in a violation of the federal securities laws and regulations;
- The dealer-manager is registered as a broker or dealer under Section 15(a) of the Exchange Act; [256]
- The affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support

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[248] 17 CFR 240.13e–4(h)(5).

[249] Release No. 34–38068 (December 20, 1996) (61 FR 68587). This class exemption permitted ''any issuer or agent acting on behalf of an issuer in connection with an odd-lot offer to purchase or arrange to purchase the security that is the subject of the offer.'' The release also states that the exemption, among other things, ''will allow the issuer or its agent to purchase the issuer's securities to satisfy requests of odd-lot holders to ''round-up'' their holdings to 100 shares.'' 61 FR at 68587–8.

[250] *Letter regarding Reuters Holdings PLC* (August 17, 1993).

[251] *Cf.* Rule 10b–10(a)(2)(ii)(A) (17 CFR 240.10b–10(a)(2)(ii)(A)).

[252] This exception is not available unless the obligation under the contract is the purchase by the covered person. For example, a purchase necessitated by an obligation to deliver pursuant to a contract is not covered.

[253] The staff of the Division of Market Regulation has taken no-action positions under Rule 10b–13 under similar facts and circumstances. *See, e.g., Letter regarding Select Sector SPDRs* (December 22, 1998).

[254] We base this language on a similar provision in Rule 101(b)(6)(i) of Regulation M [17 CFR 242.101(b)(6)(i)].

[255] *Cf.* Rule 100(b) of Regulation M (17 CFR 242.100(b)). In the Proposing Release, we asked whether we should consider provisions like those contained in the U.K. City Code on Takeovers and Mergers (''City Code'') that permit market makers affiliated with the offeror's advisors to continue their market making functions when the market maker is sufficiently independent from the advisor and other protections are present. Three commenters agreed that some exception should be provided for market making activities, and one opposed an exception based on the City Code. This exception for purchases by an affiliate of the dealer-manager permits market making activities by affiliates of the dealer-manager.

[256] 15 U.S.C. 78o.

personnel) in common with the dealer-manager that direct, effect, or recommend transactions in securities; and

- The purchases or arrangements to purchase are not made to facilitate the tender offer.

This exception, based largely upon the definition of ''affiliated purchaser'' in Rule 100 of Regulation M, allows investment affiliates to continue their investment advisory activities without interruption, on the same basis as they do during distributions subject to Rule 101 of Regulation M.[257] We believe effective information barriers between the dealer-manager and affiliate prevent improper motives from influencing purchases by affiliates while permitting such affiliates to continue their normal advisory activities. We are limiting this exception to the affiliates of dealer-managers that are registered under Section 15(a) of the Exchange Act because the dealer-managers are subject to a high level of regulatory and reporting oversight.

III. Effective Date and Transition

The new rules become effective on January 24, 2000. This date has been selected to accommodate the need for EDGAR programming before some of these changes become effective. The new rules are applicable to transactions beginning on or after the effective date, as well as to transactions already in progress on that date. The following addresses the application of the rules to some specific situations.

A. Communications

As of the effective date, the new regulatory scheme for communications is in effect. Even if a registration statement, proxy statement or tender offer statement is filed before the effective date, persons may rely on the new exemptions for communications made on or after the effective date. Of course, they must comply with the conditions of the exemptions, including the filing of written communications.

B. Confidential Treatment of Proxy Material

If preliminary proxy material is filed confidentially as permitted by the current rules before the effective date, the filer may choose to continue relying on the current rules after the effective date until the material is published, sent or given to security holders in definitive form. In that event, so long as parties to the transaction do not make public communications exceeding what would be permitted by the pre-effective date rules, the preliminary proxy material may remain confidential. On the other hand, if the parties to the transaction choose to avail themselves of the new communications exemptions before providing the definitive proxy statement, they must re-file the preliminary material publicly.

C. Early Commencement

If a registration statement for an exchange offer is filed before the effective date of the new rules, and is not effective, the filer has the option of complying with the early commencement provisions as soon as the new rules become effective.

D. Disclosure Requirements and New Schedules

The disclosure requirements have changed in a number of respects. If a registration statement, tender offer statement or proxy/information statement is filed before the effective date, the disclosure requirements in existence at that time continue to be applicable until the transaction is completed. Amendments should continue to comply with those requirements, not Regulation M–A or the revised rules. If a tender offer schedule relating to a two-tier transaction is filed before the effective date, pro forma financial information will not be required in the cash tender offer materials, even if it would be required for an offer filed on or after the effective date. However, we encourage offerors to provide this information. Amendments to tender offers filed before the effective date for the new rules should continue to be filed as amendments to Schedules 14D–1 or 13E–4, not Schedule TO. Tender offers commenced on or after the effective date must be filed on Schedule TO.

E. Subsequent Offering Period

If a tender offer statement is filed before the effective date, the bidder may choose to provide a subsequent offering period beginning on or after the effective date. Of course, it must advise security holders of the decision to include a subsequent offering period in accordance with the timing discussed above, as this would be viewed as a material change. The announcement of a subsequent offering period may be made before the effective date.

F. Revised Security Holder List Rule for Tender Offers

A request for the security holder list on or after the effective date is governed by the revised rule, whether or not the tender offer statement was filed before the effective date.

G. New Rule 14e–5

All tender offers that are publicly announced before the effective date of the amendment and redesignation of Rule 10b–13 as Rule 14e–5 are governed by Rule 10b–13, even if the tender offer extends beyond the effective date. Rule 14e–5 only applies to tender offers publicly announced on or after the effective date of the changes.

IV. Cost-Benefit Analysis

We expect that the amendments adopted today will facilitate and enhance security holder communications, especially before a registration statement relating to a business combination transaction, proxy statement or tender offer statement is filed. The amendments also will update and simplify the rules and regulations applicable to business combination transactions, including tender offers, mergers, and similar extraordinary transactions. Accordingly, we expect the cost of compliance with the applicable rules and regulations will decrease as a result of these amendments.

In addition to permitting more communications with security holders, the amendments attempt to place cash and stock tender offers on a more equal regulatory footing. We also have integrated the forms and disclosure requirements applicable to issuer tender offers, third-party tender offers and going-private transactions while consolidating the disclosure requirements in one central location within the regulations. We expect that these changes will simplify compliance with the regulations. Further, the amendments will permit bidders to provide a subsequent offering period after the successful completion of a tender offer when security holders can tender their securities without having to wait for a back-end merger. The regulations are revised to more closely align the merger and tender offer requirements as well as update the tender offer rules to clarify certain requirements and reduce compliance burdens consistent with investor protection. We expect that these changes will reduce the compliance burden on registrants and generally facilitate the consummation of transactions.

In the Proposing Release we provided our preliminary cost-benefit analysis and requested that commenters provide their views on the specific costs and benefits associated with our proposals. We also requested that commenters provide any data supporting their views. While commenters addressed the potential costs and benefits of the

[257] *Cf.* Rule 100(b) of Regulation M.

proposals in general terms, none provided empirical data to support their views. We discuss below the expected benefits and costs of the revisions and focus on the groups of persons and entities that are likely to be affected by the changes adopted today.

A. Communications

Overall, the amendments should enhance price discovery and market efficiency by permitting companies to communicate earlier and more freely about proposed business combination transactions and other significant corporate events. Currently, provisions of the Securities Act and Exchange Act, including the Williams Act, restrict the dissemination of information before a registration, proxy or tender offer statement is filed. The amendments allow companies to communicate more freely with security holders both before and after the filing of a registration, proxy, or tender offer statement.[258] The revisions allowing more communications treat bidders and targets alike—both are free to communicate with security holders regarding the merits and potential risks of a proposed transaction.

We expect that the increased flow of information will assist investors in making better-informed tender or voting decisions. We recognize that under the regulatory scheme adopted today there is a risk some persons may attempt to ''condition the market'' with false, misleading or confusing information.[259] Nevertheless, we believe that investors will benefit from an increased flow of information and they will eventually receive a registration, tender offer or proxy statement before an investment, tender or voting decision must be made with respect to a particular transaction. As a result, we expect investors will have adequate opportunity to consider the full information in the mandated disclosure document together with any information disseminated earlier before needing to act on that information.

In addition, the increased flow of information will be subject to liability. Communications that are made at any time will be subject to the antifraud provisions of Rule 10b–5 under the Exchange Act, as well as to the antifraud provisions of Rule 14a–9 and Section 14(e) if a transaction involves the proxy or tender offer rules, respectively. Also, if the transaction involves the Securities Act, the communications will be subject to Section 12(a)(2) liability as well. In addition, all material information must be included in the registration statement that is ultimately declared effective; therefore the information will be subject to Section 11 liability. In the aggregate, the liability imposed on these communications is appropriate to discourage the dissemination of false or misleading information into the market while at the same time providing investors with more information about a proposed transaction on a timely basis. We do not expect that these amendments will present a significant burden to investors or offerors.[260] Although communications are subject to liability, the amendments essentially permit communications that would not otherwise be permitted today and parties have the option of whether or not to communicate more with security holders and the markets.

The amendments also should reduce the current regulatory uncertainty relating to security holder communications. Companies have indicated difficulty in complying with the current restrictions on communications while at the same time fulfilling their duties to make full and fair disclosure under Rule 10b–5 of the Exchange Act. By relaxing the current restrictions on communications, this regulatory tension should be minimized. This clarification is expected to benefit issuers and security holders alike.

One potential cost or risk of the amendments is that some security holders may make investment decisions based on information received before a complete disclosure statement containing the required information is filed. While some investors may make premature investment decisions, the same risk exists today under the current rules. For example, the tender offer rules currently limit communications with investors until an offer is formally commenced. The required disclosure statement, however, is not required to be filed until five business days after the announcement of an offer. In addition, the information required in the mandated disclosure document may not be received by security holders until several days after the material is filed. By allowing companies to publicly announce transactions without having to file mandated disclosure documents, together with the requirement that all written communications relating to a proposed transaction be publicly filed and contain a legend advising security holders to read the complete disclosure document when it is available,[261] we believe investors will have more information and more time to make an informed investment decision. Further, investors will receive a mandated disclosure document before the time they must decide whether or not to tender in an offer.

To protect investors from possible misleading information, we are adopting new Rule 14e–8 which specifically prohibits the announcement of a tender offer if the bidder does not intend to commence and complete the offer; intends to manipulate the market price of the bidder or target; or does not have a reasonable belief it will have the means to purchase the securities sought in the offer. This new rule should encourage only bona fide offers to be publicly announced and minimize the potential for dissemination of false or misleading information in the marketplace.

In addition to permitting more communications, we believe that the amendments will reduce selective disclosure of information because companies must publicly file all written communications relating to the transaction. This filing requirement will make written communications available to a broader base of investors than is currently the case. The amendments also should increase the uniformity and timeliness of information received by investors. We recognize, of course, that the amendments will not eliminate selective disclosure entirely. In fact, the amendments may encourage companies to communicate orally instead of in writing to avoid the filing requirement. Because the market will likely demand that information be reduced to writing and companies generally will want to disseminate information broadly in order to sell their transaction to the market, we expect that the communications scheme adopted will reduce selective disclosure overall.

The revisions also will permit significantly more communications under the proxy rules, regardless of whether the communications relate to a business combination transaction. Under the amended rules, companies and security holders may communicate more freely before having to furnish a written proxy statement.[262] The increased ability to communicate under the amendments adopted today applies equally to security holders and companies. As a result, we expect

[258] *See* new Rule 165 and revised Rules 14a–12, 14d–2 and 14d–9.

[259] As discussed below, we are adopting new Rule 14e–8 to specifically prohibit certain conduct that would mislead investors.

[260] Under the exemptions adopted, all written communications relating to a proposed transaction following first public announcement must be publicly filed.

[261] *See* new Rule 165(c) and revised Rules 13e–4(c), 14a–12(a), 14d–2(b), and 14d–9(a).

[262] No proxy card or form of proxy may be given or requested unless preceded or accompanied by a proxy statement.

security holders will receive more information regarding matters on which a vote may be solicited in the future. In addition, the revisions should result in the dissemination of information earlier than is currently the case, giving security holders more time to consider that information.

We are requiring companies to provide security holders with a short ''plain English'' summary term sheet in all cash mergers, cash tender offers, and going-private transactions.[263] We expect that the required summary term sheet will facilitate investors' understanding of the basic terms of a proposed transaction, allowing them to make better-informed voting and investment decisions. We do not expect the requirement to impose a significant burden on filers because the information required in a summary term sheet must be gathered to respond to existing disclosure requirements in any event. Further, most filers should be sufficiently experienced with the plain English requirements applicable to Securities Act filings.

B. Filings

The amendments should effectively reduce the cost of complying with many of the current disclosure and other regulatory requirements. We have integrated and streamlined the current disclosure requirements applicable to business combination and going-private transactions. To a large extent the amendments harmonize and integrate the disclosure requirements for tender offer, merger proxy, and going-private transaction statements. The various disclosure requirements now appear in one location and are written in a more reader-friendly manner. Also, the amendments permit the filing of one schedule, rather than two, to satisfy the tender offer and going-private disclosure requirements when both sets of regulations apply to a particular transaction.

Consistent with the free communications scheme adopted today, we are limiting the availability of confidential treatment of merger proxy statements. Under the amendments, filers will be permitted to file a merger proxy statement confidentially so long as the parties limit their public oral and written communications to the information specified in Rule 135 of the Securities Act. If the parties to the transaction elect to publicly disclose more information than that specified in Rule 135, the proxy statement must be filed publicly. We do not expect that this limitation on confidential treatment will impose significant costs on filers. The revised treatment of merger proxy statements is consistent with the current requirement to publicly file all other registration, proxy, tender offer and going-private statements. The same information must be filed regardless of whether confidential treatment is invoked by the filer.

We expect the amendments also will reduce the burden of complying with the merger proxy and tender offer requirements by, among other things:

- Clarifying the disclosure requirements;
- Clarifying that an acquiror's financial statements are required in all-cash transactions only when the acquiror cannot demonstrate a financial ability to satisfy the terms of the transaction or the information is otherwise material;
- Eliminating the requirement to provide target financial statement information in an all-cash merger when the acquiror's security holders are not voting on the transaction;
- Reducing from three years to as little as one year, and in some cases eliminating, the required financial statements for a non-reporting target company when the acquiring company's security holders are not voting on the transaction; and
- Reducing from three years to two the required financial statements for an acquiring company in cash mergers and third-party cash tender offers.

We are adopting, however, a new disclosure requirement that may impose an additional cost on acquirors in negotiated two-tier business combination transactions. If security holders will be offered cash first in a tender offer followed by securities in a back-end merger, an acquiror must disclose certain pro forma and related financial information for the combined entity in the cash tender offer materials. We do not expect that this requirement will impose a significant burden on acquirors because the same information would eventually be required for the back-end merger. The amendments require disclosure at an earlier point in time, when security holders are confronted with a cash tender offer and must decide whether to tender in the offer or wait to receive securities in the back-end. The pro forma information required will benefit investors and should not impose a significant burden on acquirors. Therefore, the costs associated with providing pro forma information is reasonable. We recognize, however, that some acquirors may have difficulty in generating reliable pro forma financial information in situations when the target is not cooperating with the bidder. In response to this concern, we have limited the pro forma requirement to negotiated transactions.

For the purposes of the Paperwork Reduction Act, Table 2 in Part VII below summarizes our estimate of the paperwork burden hours that parties would expend to comply with the amended rules. In arriving at these estimates we note that U.S. merger and acquisition activity in 1998 was valued in excess of $1.3 trillion.[264] These estimates include the burden hours incurred by companies from filing pre-filing communications. We have based these estimates on current burden hour estimates and the staff's experience with these filings. The estimates in the table indicate that parties would expend approximately 234,759 burden hours/year complying with the revised rules. If we assume that 70% of the burden hours would be expended by persons that cost the affected parties $85/hour (*e.g.,* professionals) and 30% of these burden hours would be expended by persons that cost $10/hour (*e.g.,* clerical support), then the proposals would cost approximately $14,691,250/year in internal staff time. We expect that a majority of the compliance burden will fall on professionals while approximately one-third of the burden will rest on clerical staff that will monitor and implement the compliance process.

For purposes of the Paperwork Reduction Act, we also estimate that parties would spend approximately $122,929,990/year on outside professional assistance to comply with the proposals. Thus, we estimate that affected parties would spend approximately $137,621,240/year to comply with the paperwork requirements of the amended rules. Applying the same cost estimates to the burden imposed by the current rules, we estimate that companies and affected parties spend approximately $163,268,490/year.[265] Note that these estimates do not attempt to quantify intangible benefits of the amended rules, such as the benefits to issuers and investors of enhanced communications

[263] Forms S–4 and F–4 are already subject to the plain English requirements; thus we are not requiring a summary term sheet for securities offerings.

[264] *See* Mergers & Acquisitions, The Dealmaker's Journal, 1998 Almanac (March/April 1999), at 42.

[265] For the purposes of the Paperwork Reduction Act, we estimate in Table 2 of Part VII the burden hours imposed on parties to comply with the current rules. Assuming (as we did for the proposed rules) that 25% of the hours required to comply with the rules are provided by corporate staff at a cost of $63/hour (70% of the expended corporate staff time cost $85/hour, whereas 30% of the expended corporate staff time cost $10/hour), and 75% of the hours required to comply with the rules are provided by external professional help at a cost of $175/hour, we estimate that affected parties spend approximately 1,110,670 burden hours/year * $147/hour=$163,268,490/year.

and possible improvements in price discovery, nor intangible costs.

C. Tender Offers

We are providing bidders with more flexibility regarding the timing of exchange offers. Currently, bidders may not commence an exchange offer until the related registration statement is effective. Under the amendments, bidders will be able to commence an exchange offer as soon as they file a registration statement, or on a later date if desired. Offerors will no longer need to wait for effectiveness to commence an exchange offer. We expect that this increased flexibility will encourage issuers to file their registration statements earlier, thereby creating an incentive to publicly disseminate more information sooner rather than selectively communicate with a limited number of security holders. In addition, we expect the attempt at balancing the regulatory treatment of cash and stock offers will enhance the attractiveness of offering securities, more so than is currently the case. The increased feasibility of offering securities as an alternative to cash should result in a more competitive market for target companies overall.

We realize that the ability to commence an offer early will likely shorten the period of time necessary to complete an exchange offer relative to the time currently required. We retain, however, certain investor protection mechanisms, including a requirement that a bidder may not purchase securities tendered in an exchange offer until the related registration statement is effective. In addition, the exchange offer may not expire until after the mandatory 20-business day tender offer period has elapsed. The bidder must disseminate a supplement to security holders containing all material changes to the information previously disseminated and security holders may withdraw tendered securities at any time until purchased by the bidder.

We also recognize that early commencement may increase the risk that bidders offering securities will need to disseminate supplements to disclose changes in material information. This may cause bidders to incur additional costs in redisseminating information and security holders will need to reconsider their investment decisions upon receipt of the new information. The risk is not unique to exchange offers, however, because bidders run the same risk today in cash tender offers when there is a material change in information. We do not expect that the costs associated with redissemination will be overly burdensome because early commencement is at the bidder's election. Bidders are not required to commence immediately upon filing. Instead, bidders can file a registration statement and wait for staff comments before disseminating offering materials and commencing the offer, thereby minimizing both the need for supplements and the costs associated with redissemination.

The amendments also permit bidders to purchase (at the stated offer price) securities from holders who did not tender their shares during the offer in a follow-on period called a ''subsequent offering period.'' We expect this change will minimize the delay security holders currently encounter in liquidating their investment in a target company when the bidder is successful in purchasing a significant or controlling interest in the target. We recognize that some security holders might wait to tender their shares until the subsequent offering period, thus creating a hold-out problem for some bidders. We do not believe, however, that the need to announce a subsequent offering period in advance will pose a significant hold-out risk because most bidders will not be willing to close the initial offering period until a sufficient number of securities have been tendered in the offer. Therefore, security holders will need to tender a sufficient number of securities into an offer before the bidder will close the initial offering period and purchase the securities tendered in the offer. As a result, the economics of the transaction will drive a sufficient number of security holders to tender. In addition, we note that bidders are not required to provide a subsequent offering period, but may do so at their election.

We are reducing the financial statement requirement in third-party cash tender offers from three years to two when the information is material. This change harmonizes the financial statement requirement in third-party tender offers with the requirements for issuer tender offers and going-private transactions. We expect that this reduction from three to two years of historical financial statements will lower a bidder's costs to comply with our rules, while continuing to give security holders adequate information to make investment decisions.

The amendments also allow bidders greater access to security holders in tender offers by enabling them to contact non-objecting beneficial owners if the target company maintains a list of these persons. The amendment is expected to give bidders the same ability as target companies to communicate directly with non-objecting beneficial owners of securities similar to that provided under the proxy rules. This revision should benefit both bidders and security holders because communications regarding tender offers will be more efficient than they are today. The amendments do not require targets to gather this information. Instead, the information must be provided only when the target has the information and elects to provide the bidder with security holder list information instead of mailing the tender offer materials for the bidder. Accordingly, we do not expect the revised rule will impose significant costs on target companies.

V. Commission Findings and Considerations

A. Exemptive Authority Findings

We find that it is appropriate, in the public interest and consistent with the protection of investors to exempt: (i) Persons making communications regarding planned business combination or similar takeover transactions from Sections 5(b)(1) and (c) of the Securities Act; and (ii) exchange offers commencing early from section 5(a) and (b)(2) of the Securities Act. We make these findings based on the reasons described in this release. In particular, we believe that investors will be better served if they are able to receive more information concerning business combination transactions before the time they must make an investment decision.

Our use of exemptive authority will allow companies to communicate more freely with security holders and the markets and will permit investors to receive more information in a timely manner. If security holders receive more information sooner, they will be able to better inform themselves before having to make an investment decision. In addition, our use of exemptive authority will help minimize the regulatory disparity between exchange offers and cash tender offers. If bidders can choose more freely between offering cash or securities as consideration in a business combination, the markets will operate more efficiently and security holders will benefit as a result.

In light of improved technologies that permit more and faster communications with security holders and the markets, and the increasing speed at which business combination transactions are consummated, we believe that removing restraints on communications will benefit investors. Therefore, we have found that persons making communications regarding these types of transactions should be free to communicate earlier, before a formal

registration statement is filed or a prospectus meeting the requirements of Section 10(a) of the Securities Act is delivered.

We realize that these exemptions will lead to significantly more communications, some of which could be incomplete in the absence of a mandated disclosure document. We believe, however, that investors will be adequately protected by our continuing requirement to furnish security holders with a complete disclosure document before an investment decision must be made. In addition, we believe that the level of liability imposed on these pre- and post-filing communications will be adequate to protect investors.

B. Effect on Competition

Section 23(a) of the Exchange Act [266] requires us, in adopting rules under the Exchange Act, to consider the impact those rules would have on competition. We cannot adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. We did not receive any information from commenters on the impact of increased competition for capital in connection with business combination transactions. We also received no comments on whether the new rules, schedules and amendments will have an adverse effect on competition or will impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Harmonizing the requirements between cash and exchange offers removes burdens on competition. Our view, therefore, is that any anti-competitive effects of the new rules, schedules and amendments adopted today are necessary or appropriate in the public interest.

C. Promotion of Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act [267] and section 3(f) of the Exchange Act,[268] as amended by the National Securities Markets Improvement Act of 1996,[269] provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also must consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We believe that harmonizing the regulatory requirements between cash tender and exchange offers will promote efficiency and competition. In addition, facilitating communications with security holders will promote efficiency and capital formation.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the provisions of the Regulatory Flexibility Act (''RFA''), as amended by Public Law 104–121, 110 Stat. 847, 864 (1996), 5 U.S.C. 604. The FRFA relates to the new rules, amendments, and schedules adopted today, which are primarily intended to enhance communications with security holders; harmonize the regulations affecting cash and stock tender offers; facilitate compliance with the rules and regulations associated with business combination transactions and similar extraordinary transactions; and promote investor protection.

A. Need for Action

Communications

Currently, the rules and regulations applicable to business combination transactions impose restrictions on communications during the period before a mandated disclosure document is publicly filed with us. These restrictions appear in the registration, proxy and tender offer rules.[270] Companies, security holders and other market participants have expressed an increasing desire to communicate and receive information about proposed business combination transactions before the time that a mandated disclosure document (*e.g.,* a registration, proxy or tender offer statement) is filed. This desire is partly attributable to the emergence of new and developing technologies that allow for faster and less expensive means to communicate. In addition, disclosure requirements under both the federal securities laws and applicable exchange rules and regulations may require disclosure. Further, participants to business combination transactions often feel compelled to promptly inform the marketplace, their employees, suppliers, and customers about a proposed business combination transaction that potentially could impact their relationships with these constituencies. We also have recognized that business combination transactions differ from capital-raising transactions to the extent that security holders may be forced to take cash or securities in exchange for their securities even though no action is taken with respect to the transaction.

Accordingly, we have decided to eliminate many of the restrictions imposed on communications before a mandated disclosure document is filed by adopting specific exemptions under each regulatory scheme that could apply to a business combination transaction. Revised Securities Act Rules 135 and 145 and new Rules 165, 166 and 425 permit more communications regarding a business combination transaction before a registration statement is filed. Revised proxy Rule 14a–12 permits more communications regardless of whether a business combination transaction is involved before a proxy statement must be filed. Revised tender offer Rule 14d–2 permits a bidder to communicate more information without having to formally commence its tender offer or file a tender offer statement. Revised tender offer Rule 14d–9 permits a target to respond to a bidder's announcement of a proposed tender offer before commencement of the offer without having to file a solicitation/recommendation statement.

In each case, the person making communications must file all written communications made in connection with or relating to the transaction on the date of first use. The written communications must contain a brief legend advising security holders to read the applicable mandated disclosure document when it is filed together with any other documents that may be available. Under the new regulatory scheme security holders must be furnished with the traditional mandated disclosure document before they must make an investment or voting decision. This new regulatory scheme facilitates the dissemination of more information to security holders at an earlier point in time, providing security holders with a greater opportunity to consider the information in light of all other information available, including the mandated disclosure document that must be furnished before action can be taken.

Balancing the Regulation of Stock and Cash Tender Offers

Currently, a bidder offering securities as consideration in an exchange offer may not commence the offer until a related registration statement is effective.[271] This differs in a significant

[266] 15 U.S.C. 78w(a)(2).

[267] 15 U.S.C. 77b.

[268] 15 U.S.C. 78c.

[269] Pub. L. 104–290, § 106, 110 Stat. 3416 (1996).

[270] For example, *see* section 5 of the Securities Act, Rules 14a–3, 14a–6, 14a–11 and 14a–12 (proxy rules) and Rules 14d–1, 14d–2 and 14d–3 (tender offer rules).

[271] *See* Rule 14d–2(a)(4) stating that commencement occurs when definitive copies of the prospectus/tender offer material are first published, sent or given to security holders.

respect from cash tender offers that may commence as soon as a tender statement is filed and the required information disseminated to security holders. This disparity in regulatory treatment of cash and stock tender offers may influence a bidder's choice of consideration offered in a tender offer. In order to provide bidders with more flexibility on the form of consideration to offer in a business combination transaction, we are revising the rules to permit the commencement of exchange offers before a related registration statement is effective.[272] A bidder, however, may not close its exchange offer and purchase the tendered securities until after the related registration statement is effective. Bidders also must deliver a preliminary prospectus containing all required information in addition to supplements or amendments that disclose material changes from the prospectus previously furnished. This balancing of the regulatory treatment of cash and stock tender offers will provide bidders with increased flexibility to choose between cash and securities as consideration in a business combination transaction without impairing the current level of investor protection afforded to security holders.

Harmonizing, Clarifying and Updating the Disclosure Requirements

In some cases the current rules relating to business combination transactions require differing levels and types of information based on how the transaction is structured. If a transaction is structured as a merger instead of a tender offer, the required disclosure may differ unnecessarily. For example, a fully-financed, all-cash merger generally requires three years of financial statements for the company to be acquired,[273] while a fully-financed, all-cash all-share tender offer generally will not require any financial statement information for either the bidder or the target unless that information is material.[274] In addition, there are other areas where the required level of information may differ unnecessarily. For example, issuer tender offers and going-private transactions generally require two years of financial statements while third-party tender offers require three years of financial statements, when material.

This disparity in required disclosure may be attributed in part to the fact that the disclosure requirements were not adopted at the same time, resulting in some minor inconsistencies or differences. The new and revised schedules[275] and disclosure items[276] serve to integrate the disclosure requirements, harmonizing the requirements to the extent practicable and appropriate. The revisions adopted will facilitate compliance with the disclosure requirements applicable to business combination transactions and going-private transactions while maintaining all substantive disclosure requirements appropriate to the transaction.

B. Objectives of the Rule Amendments

The new rules, schedules and amendments are expected to reduce compliance costs overall for all persons that are subject to our rules and regulations, benefiting both small and large business entities. As a result of the amendments adopted, security holders, including small entities, should receive more information on a timely basis. In addition, persons subject to our rules should have greater flexibility in structuring and completing tender offers, mergers, and other extraordinary transactions. Also as a result of the amendments, bidders should realize greater flexibility in selecting the form of consideration to offer in a tender offer (*e.g.*, cash or securities). We expect that our revisions harmonizing, clarifying and updating the disclosure requirements will facilitate compliance with the rules and regulations as well as improve the disclosure that security holders ultimately receive in business combination transactions.

C. Summary of Significant Issues Raised by the Public Comments

We requested comment with respect to the Initial Regulatory Flexibility Analysis (''IRFA'') that was prepared when the new rules, amendments and schedules were proposed. We did not receive any comments with respect to the IRFA.

D. Description and Estimate of the Number of Small Entities Subject to the New Rules

We adopted definitions of the term ''small business'' for the various entities subject to our rulemaking. Rule 157 under the Securities Act[277] and Rule 0–10 under the Exchange Act[278] provide that ''small business issuer'' includes an issuer, other than an investment company, that has total assets of $5 million or less as of the end of its most recent fiscal year. For purposes of the RFA, an investment company is a small business if the investment company, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[279]

Currently, we are aware of approximately 836 reporting companies that are not investment companies with assets of $5 million or less. In addition, there are approximately 320 investment companies that satisfy the ''small business'' definition. All of these companies could potentially be subject to at least some of the new rules, schedules, and amendments. We expect small businesses will be affected by these amendments to the extent that they are involved in a business combination transaction. In addition, small businesses may be affected by the amendments made to the proxy rules, which permit significantly greater communications with and among security holders. Small entities that are required to file registration statements, proxy statements, tender offer statements and other reports under the Securities Act, Exchange Act, and Investment Company Act will be affected by these amendments. Finally, small entities may be affected as shareholders in companies that are part of a business combination.

We have no reliable way of determining or estimating the number of reporting or non-reporting small businesses that may seek to rely on or would otherwise be affected by the new rules, schedules and amendments. We believe, however, that these amendments will substantially benefit both small and large entities to the extent they will substantially reduce current restrictions on communications and generally facilitate compliance with existing rules and regulations. In addition, because many of the amendments represent exemptions from existing rules and regulations, small businesses can decide whether the burdens imposed by the requirements (*e.g.*, the filing of written communications) outweigh the related benefits (*e.g.*, the ability to communicate more freely).

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements

We believe that the new rules, schedules and amendments are primarily deregulatory in nature because they significantly expand the ability of businesses to structure and

[272] *See* new Rule 162 and revised Rule 14d–2(a).

[273] *See* Item 14 of Schedule 14A.

[274] *See* Item 9 to Schedule 14D–1.

[275] New Schedule TO (replacing Schedules 13E–4 and 14D–1) and revised Schedules 13E–3 and 14D–9.

[276] Regulation M–A, Items 1000 through 1016 and revised Item 14 of Schedule 14A.

[277] 17 CFR 230.157.

[278] 17 CFR 240.0–10.

[279] 17 CFR 270.0–10.

time their business combination transactions and communicate with security holders. In addition, security holders in general will be afforded a greater opportunity to receive information and communicate with other security holders. The resulting increase in flexibility to communicate will benefit companies as well as security holders.

Under the amendments, small businesses will report and file essentially the same information as they do today. One exception to this generalization, however, is that both large and small bidders are required to publicly file all pre-and post-filing written communications relating to proposed business combination transactions. This filing requirement is necessary due to the deregulation of pre-filing communications. Companies are not obligated to communicate with security holders, but to the extent that they do communicate in writing, those communications must be filed on the date of first use. The new rules, schedules, and amendments adopted today treat all persons and entities alike, and do not make any distinctions based on size.

F. Description of Steps Taken To Minimize the Effect on Small Entities

We are directed by the RFA to consider significant alternatives to proposals that would accomplish our stated objectives while minimizing any significant adverse economic impact on small entities. In connection with the proposals presented in the Proposing Release, the views expressed by commenters, and our extensive review of existing rules and regulations, we considered several possible alternatives, including:

- Establishing different compliance and reporting requirements or timetables that take into account the resources of small businesses;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rule for small businesses;
- Using performance rather than design standards; and
- Exempting small businesses from all or part of the requirements.

Because the new rules, schedules, and amendments are primarily deregulatory in nature, any different treatment of small business entities would likely be more burdensome to small business entities. The amendments significantly expand the ability of businesses to structure and time their business combination transactions and communicate with security holders, while maintaining investor protections. While we considered excluding smaller entities from the new rules, schedules, and amendments, we concluded that the benefits of the amendments should apply to all businesses regardless of their size. If small business were exempted, in most cases they would be subject to more rather than less regulation. Accordingly, we decided not to limit the new rules and amendments and their corresponding benefits to larger issuers.

Accordingly, we do not believe any benefit can be achieved by providing separate disclosure requirements for small issuers based on the use of performance rather than design standards.

VII. Paperwork Reduction Act

In November, 1998, the staff submitted the proposed new rules, schedules and amendments to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Also, in accordance with the Paperwork Reduction Act, we solicited comment on the compliance burdens associated with the proposals. We did not receive any public comments that quantified the estimated paperwork burdens associated with the new rules, schedules and amendments. The comments we received primarily addressed the costs and benefits of the proposals in general terms. We discuss these general comments above in more detail.

The new rules, schedules and amendments will affect several regulations and forms that contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[280] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Table 1 below provides the titles for the affected collections of information under the Exchange Act, current OMB control numbers, where applicable, a summary of the collection of information, and a description of the likely respondents to each collection of information.[281]

TABLE 1: COLLECTIONS OF INFORMATION UNDER THE SECURITIES ACT AND EXCHANGE ACT

Title	OMB Control Number	Summary of the collection of information and description of likely respondents
Schedule 14A	3235–0059	If a vote of security holders is required, persons soliciting proxies with respect to securities registered under Section 12 of the Exchange Act must furnish security holders with a proxy statement containing the information specified in Schedule 14A. The proxy statement is intended to provide security holders with the information necessary to enable them to make an informed voting decision on any matters that will be acted upon at an annual or special meeting of security holders.
Schedule 14C	3235–0057	If a vote of security holders is required, but proxies are not being solicited, companies with securities registered under Section 12 of Exchange Act must send an information statement containing the information specified in Schedule 14C to every security holder that would be entitled to vote on the matters presented at a meeting at which a vote will be taken.
Schedule 13E–3	3235–0007	Companies or their affiliates engaging in specified transactions that cause a class of the company's equity securities registered under the Exchange Act to be: (1) Held by fewer than 300 record holders; or (2) de-listed from a securities exchange or inter-dealer quotation system must file and disseminate to security holders the information specified in Schedule 13E–3. This schedule requires detailed information addressing whether the filing persons believe the transaction is fair to unaffiliated security holders and why.
Schedule 14D–9	3235–0102	Issuers of securities registered under Section 12 of the Exchange Act that make a solicitation or recommendation to security holders regarding a third-party tender offer subject to Regulation 14D must file and send to security holders the information specified in Schedule 14D–9.

[280] 44 U.S.C. 3501 *et seq.*

[281] Although Regulations S–K and S–B do not actually impose reporting burdens directly on public companies, for administrative convenience, we have assigned each of these regulations one burden hour. The burden hours imposed by the disclosure regulations are included in the estimates for the forms that refer to the regulations.

TABLE 1: COLLECTIONS OF INFORMATION UNDER THE SECURITIES ACT AND EXCHANGE ACT—Continued

Title	OMB Control Number	Summary of the collection of information and description of likely respondents
Schedule 13E–4	3235–0203	Issuers of securities registered under Section 12 or reporting under Section 15(d) of the Exchange Act, and certain of their affiliates, must file and disseminate to security holders the information specified in Schedule 13E–4 when making a tender offer for any class of the issuer's equity securities.
Schedule 14D–1	3235–0102	Any person, other than the issuer, making a tender offer for equity securities registered under Section 12 of the Exchange Act, that would result in that person owning greater than five percent of the class of the securities subject to the offer, must at the time of the offer file and disseminate the information specified in Schedule 14D–1 to the issuer, security holders and competing bidders.
Schedule TO	3235–0515	Any person making a tender offer for securities that would have to file a Schedule 13E–4 or 14D–1 must now file and disseminate to security holders the information specified in Schedule TO, instead of Schedule 13E–4 or 14D–1.

The new rules, schedules, and amendments update and simplify the rules and regulations applicable to business combination transactions. The information required by these schedules is needed so that security holders can make an informed tender or voting decision with respect to tender offers, mergers, acquisitions, and other extraordinary transactions. We enhance communications between public companies and investors by providing companies with greater flexibility to determine when to file their registration statements involving takeover transactions, proxy statements, and tender offer statements. We also attempt to put cash and stock tender offers on a more equal regulatory footing; integrate the forms and disclosure requirements in issuer tender offers, third-party tender offers and going-private transactions; and consolidate the disclosure requirements in one location in the regulations. In addition, we allow bidders to accept tenders from security holders during a limited period after the successful completion of the tender offer; more closely align the merger and tender offer requirements; and update the tender offer rules to clarify certain requirements and reduce compliance burdens where consistent with investor protection.

The schedules and regulations affected by these changes set forth the public disclosures that offerors are required to make concerning business combination transactions. For the most part the disclosure requirements in the above schedules remain the same, with a few limited exceptions. Specifically, revised Schedules 14A, 14C, 13E–3, 14D–9, and new Schedule TO requires a brief ''plain English'' summary term sheet highlighting the most significant aspects of a particular transaction in all cash mergers, cash tender offers, and going-private transactions.[282] The amendments also reduce in certain instances the number of years of financial statements that are required in Schedules 14A and 14C for acquirors and companies being acquired in cash mergers. For example, Schedules 14A and 14C no longer require the financial statements of the target in a cash merger when the acquiror's security holders are not voting on the transaction.

New Schedule TO, which replaces current Schedules 13E–4 and 14D–1, harmonizes and clarifies the disclosure requirements in issuer and third-party tender offers. For example, currently when a third-party bidder's financial statement information is material to security holders, three years of financial statements are required while only two years is required for issuers making an issuer tender offer. New Schedule TO requires only two years of financial statements for the bidder if that information is material, regardless of whether an issuer or third-party is making the tender offer. In a negotiated two-tier transaction, Schedule TO will require the bidder to provide security holders with certain pro forma financial and other related information for the combined entity at the time of the cash tender offer. In addition, the amendments permit the filing of one schedule, rather than two, to satisfy the tender offer and going-private disclosure requirements when both sets of regulations apply to the transaction. As a result, the amendments are expected to reduce the number of filings required.

The information collection requirements imposed by the schedules and regulations are mandatory to the extent that companies are publicly-owned and engage in business combination transactions. There is no mandatory retention period for the information disclosed. The information gathered by these schedules and regulation is made publicly available, unless confidential treatment is available. Confidential treatment of information in preliminary merger proxy statements is retained to a limited extent.

As discussed in more detail in Part IV above, the amendments reduce the burden of complying with the disclosure and transaction requirements applicable to business combination transactions. We estimate that public companies will expend approximately 988,986 burden hours/year to comply with the new rules, schedules, and amendments.

Table 2 below summarizes our estimates of the burden hours that filers will expend to comply with the new rules, amendments and schedules. We expect compliance costs will be less than current costs because the amendments primarily integrate and streamline the disclosure requirements for business combination transactions. Our estimates include the burden hours that will be incurred by companies to file pre-filing written communications. We base these estimates on current burden hour estimates and the staff's experience with these filings. The estimates in the table indicate that filers will expend approximately 234,759 burden hours/year to comply with the amendments. In addition, as discussed in more detail below, we estimate that filers will spend approximately $122,929,990/year on outside professional help to comply with the amendments. The estimates are discussed in greater detail below.

[282] Forms S–4 and F–4 are currently subject to summary and plan English requirements. Therefore, we are not requiring a plain English summary term sheet for business combination transactions that are registered on one of these forms.

TABLE 2: BURDEN HOUR ESTIMATES

Schedule	Estimated burden Hours/filing		Estimated filings/year [283]		Estimated burden hours	
	Before revisions (A)	After revisions (B)	Before revisions (C)	After revisions (D)	Before revisions (E =A*C	After revisions (F)=B*D
14A	87.00	13.12	9,892	13,255	860,604	173,906
14C	87.00	13.12	253	339	22,011	4,448
13E–3	139.25	34.31	96	96	13,368	3,294
14D–9	354.25	64.43	258	353	91,397	22,744
13E–4	232.00	0.00	139	0	32,248	0
14D–1	354.25	0.00	257	0	91,042	0
TO	0	43.50	0	705	0	30,668
Rule 425 filings	0	0.25	0	10,628	0	2,657
Total	.....	.....	.....	.....	1,110,670	237,717

[283] The estimated filings/year are based on the number of filings in fiscal year 1998.

We expect that the amendments will reduce the number of burden hours required to file a full Schedule 14A from 87 hours today to 70 hours under the amendments.[284] Of the 70 hours, we estimate that 25% (17.5 internal burden hours) will be provided by corporate staff, and 75% (52.5 hours) by external professional help. Based on filings received in fiscal year 1998, we anticipate that companies and other filers will file approximately 9,892 full Schedule 14As/year. Under the amendments, companies and other filers also are required to file under cover of Schedule 14A any pre-filing written communications (in addition to the required proxy statement) concerning business combinations for cash.[285] Revised Rule 14a–12 requires filers to file their pre- and post-filing written communications and include certain information including a legend advising security holders to read the proxy statement. In fiscal year 1998, approximately 9,892 full Schedule 14As were filed. We estimate that approximately 34% of the full Schedule 14As filed will involve cash rather than securities.[286] We also estimate that filers, on average, will file one written communication (in addition to the required proxy statement) for each cash transaction. We estimate that a firm's corporate staff will expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the amended rules.[287] Thus, we estimate filers will file 9,892 full Schedule 14As/year (expending 17.5 internal burden hours/filing) and 3,363 written communications/year (expending 0.25 internal burden hours/filing). On average, filers will require approximately 13.12 internal burden hours to file 13,255 full Schedule 14As and written communications. In addition, we anticipate filers will spend, at an estimated $175/hour, approximately $9,188/filing in professional labor costs to file a Schedule 14A.[288]

We anticipate the amendments will reduce the number of hours required to file a full Schedule 14C from 87 hours today to 70 hours under the amendments. Of the 70 hours, we estimate that 25% (17.5 internal burden hours) will be provided by corporate staff, and 75% (52.5 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other filers will file approximately 253 full Schedule 14Cs/year. Under the amended rules, companies and other filers also are required to file under cover of Schedule 14C any pre-filing written communications (in addition to the required proxy statement) concerning business combinations for cash.[289] The amendments require filers to file their written communications and include certain information including a legend advising security holders to read the information statement. In fiscal year 1998, approximately 253 full Schedule 14Cs were filed. We estimate that 34% of the full Schedule 14Cs will involve cash rather than securities.[290] We estimate that filers, on average, will file one written communication (in addition to the required information statement) for each cash transaction. We estimate that a firm's corporate staff will expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the amended rules. Thus, we estimate filers will file 253 full Schedule 14Cs/year (expending 52.50 burden hours/filing) and 86 written communications/year (expending 0.25 internal burden hours/filing). On average, filers will require approximately 13.12 internal burden hours to file 339 full Schedule 14Cs and written communications. In addition, we anticipate filers will spend, at an estimated $175/hour, approximately $9,188/filing in professional labor costs to file a full Schedule 14C.[291]

[284] The numbers in Column B of Table 2 differ significantly from those in Column A of Table 2 for two reasons. First, the estimated burden hours in Column A include the estimated corporate burden hours and outside labor hours that filers would require to file each disclosure document. In Column B, we estimate only the corporate burden hours needed to file each disclosure document (we estimate separately the expense, in dollar terms, of outside labor). Second, the estimates in Column B include the estimated burden hours that bidders would require to file pre-filing communications. Because parties would require less time to file communications than full Schedule 14As, the average estimated burden hours in Column B are lower than in Column A.

[285] Under the amendments, bidders will file their pre- and post-filing written communications relating to a business combination transaction under Rule 425 in transactions where securities are offered as consideration.

[286] This estimate is based on data from the Securities Data Corporation indicating that security holders had received only cash in 34% of the merger transactions reported in 1996.

[287] We base this estimate on the burden imposed by a similar filing requirement under Item 901(c) of Regulation S–K for roll-up transactions.

[288] We base this estimate on 52.50 hours of professional labor/full Schedule 14A filing * $175/hour. In aggregate, we estimate that filers will spend $90,887,696/year to file 9,892 full Schedule 14As/year.

[289] Under the amendments, bidders will file under rule 425 pre- and post-filing written communications relating to a business combination transaction where securities are offered as consideration.

[290] This estimate is based on data from the Securities Data Corporation indicating that in security holders had received only cash in 34% of merger transactions in 1996.

[291] We base this estimate on 52.50 hours of professional laborfull Schedule 14C filing * $175/

Continued

The amendments clarify and make several technical changes to Schedule 13E–3. As a result, we anticipate a savings of two hours, from 139.25 hours/filing to 137.25 hours/filing, to file Schedule 13E–3 under the amendments. Of the 137.25 hours, we estimate that 25% (34.31 internal burden hours) will be provided by corporate staff, and 75% (102.94 hours) by external professional help. Based on filings in fiscal year 1998, we estimate filers will file 96 Schedule 13E–3s/year. In addition, we anticipate filers will spend, at an estimated $175/hour, approximately $18,015/filing in professional labor costs to file a full Schedule 13E–3.[292]

The amendments clarify and make several technical changes to Schedule 14D–9. As a result, we anticipate a savings of two hours, from 354.25 hours/filing to 352.25 hours/filing, to file a full Schedule 14D–9 under the amendments. Of the 352.25 hours, we estimate that 25% (88.06 internal burden hours) will be provided by corporate staff, and 75% (264.19 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other filers will file approximately 258 full Schedule 14D–9s/year. Under the amendments, companies and other filers also are required to file under cover of Schedule 14D–9 any pre- or post-filing written communications (in addition to the required proxy statement) concerning business combinations for cash.[293] The rule requires filers to attach their written communications and include certain information including a legend advising security holders to read the full recommendation statement. In fiscal year 1998, approximately 258 full Schedule 14D–9s were filed. We estimate that 37% of the full Schedule 14D–9s filed will involve cash rather than securities.[294] We estimate that filers, on average, will file one written communication (in addition to the required information statement) for each cash transaction. We estimate that a firm's corporate staff will expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under Rule 425. Thus, we estimate filers will file 258 full Schedule 14D–9s /year (expending 88.06 internal burden hours/filing) and 95 written communications/year (expending 0.25 internal burden hours/filing). On average, filers will require approximately 64.43 internal burden hours to file 353 full Schedule 14D–9s and written communications. In addition, we anticipate filers will spend, at an estimated $175/hour, approximately $46,233/filing in professional labor costs to file a full Schedule 14D–9.[295]

Under the amendments new Schedule TO replaces current Schedules 13E–4 and 14D–1. Schedule TO harmonizes and clarifies the requirements in current Schedules 13E–4 and 14D–1. Based on the number of Schedule 13E–4 and Schedule 14D–1s filed in fiscal year 1998, and the number of hours required to complete them, we estimate that bidders will require approximately 309 hours to file a full Schedule TO under the amended rules.[296] Of the 309 hours, we estimate that 25% (77.25 internal burden hours) will be provided by corporate staff, and 75% (231.75 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other filers will file approximately 396 full Schedule TOs/year. Under the amendments, companies and other filers also will be required to file under Schedule TO all pre- and post filing written communications (in addition to the required tender offer statement) concerning all cash tender offers.[297] The amendments require filers to file their written communications with certain information including a legend advising security holders to read the tender offer disclosure statement. We estimate that filers, on average, will file one written communication (in addition to the required information statement) for each cash tender offer transaction. We estimate that a firm's corporate staff will expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the amendments. Based on data from fiscal year 1998, we estimate filers will file 396 full Schedule TOs/year (expending 77.25 internal burden hours/filing) and 309 written communications/year (expending 0.25 internal burden hours/filing).[298] On average, filers will require approximately 43.50 internal burden hours to file 705 full Schedule TOs and written communications. In addition, we anticipate filers will spend, at an estimated $175/hour, approximately $40,556/filing in professional labor costs to file a full Schedule TO.[299]

VIII. Statutory Basis and Text of Amendments

We are adopting amendments to the rules under sections 2(3), 5, 7, 8, 10, 12, 19 and 28, of the Securities Act of 1933, as amended, and sections 3(b), 4(e), 10(b), 13, 14, 18, 23(a), 24 and 36 of the Securities Act of 1934, as amended.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegation.

17 CFR Parts 229, 230, 232, 239 and 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 200.30–3 [Amended]

2. By amending paragraph (a)(6) of § 200.30–3 by removing the phrase

hour. In aggregate, we estimate that filers will spend $2,324,564/year to file 253 full Schedule 14Cs/year.

[292] We base this estimate on 102.94 hours of professional labor/full Schedule 13E–3 filing * $175/hour. In aggregate, we estimate that filers will spend $1,729,440/year to file 96 full Schedule 13E–3s/year.

[293] Under the amendments, bidders must file under Rule 425 any pre- or post-filing written communications in business combination transactions where securities are offered as consideration.

[294] This estimate is based on data from the Securities Data Corporation and *Mergerstat*, indicating that security holders received only cash in 37% of merger and tender offer transactions in 1996.

[295] We base this estimate on 264.19 hours of professional laborfull Schedule 14D–9 filing * $175/hour. In aggregate, we estimate that filers will spend $11,928,114/year to file 258 full Schedule 14D–9s/year.

[296] Offerors currently require 232 hours to complete Schedule 13E–4, and 354.25 hours to complete Schedule 14D–1. In fiscal year 1998, offerors registered 139 business combinations on Schedule 13E–4 and 257 business combinations on Schedule 14D–1. We estimate the number of burden hours to file a full Schedule TO will be [(139 Schedule TO filings that previously would have been filed on Schedule 13E–4 * 232 hours/Schedule TO filing that previously would have been filed on Schedule 13E–4) + (257 Schedule TO filings that previously would have been filed on Schedule 14D–1 * 354.25 hours/Schedule TO filing that previously would have been filed on Schedule 14D–1)—2 burden hours from simplication]/396 filings on Schedule TO = 309 hours/filing on Schedule TO.

[297] Under the new rules, bidders must file under Rule 425 any pre-filing communications in transactions where securities are offered as consideration.

[298] According to *Mergerstat*, in 1996 security holders received only cash in 78% of tender offer transactions.

[299] We base this estimate on 231.75 hours of professional labor/full Schedule TO filing * $175/hour. In aggregate, we estimate that filers will spend $16,060,176/year to file 396 full Schedule TOs/year.

''Rules 10b–13(d), 14e–4(c), and 15c2–11(h) (§§ 240.10b–13(d), 240.14e–4(c), and 240.15c2–11(h) of this chapter)'' and in its place adding ''Rules 14e–4(c), 14e–5(d), and 15c2–11(h) (§§ 240.14e–4(c), 240.14e–5(d), and 240.15c2–11(h) of this chapter)'', and removing the phrase ''to grant requests for exemptions from Rules 10b–13, 14e–4, and 15c2–11) (§§ 240.10b–13, 240.14e–4, and 240.15c2–11 of this chapter)'' and in its place adding ''to grant requests for exemptions from Rules 14e–4, 14e–5, and 15c2–11 (§§ 240.14e–4, 240.14e–5, and 240.15c2–11 of this chapter)''.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. By revising paragraph (a)(2) of § 229.10 to read as follows:

§ 229.10 General.

(a) *Application of Regulation S–K.*

* * *

(2) Registration statements under section 12 (subpart C of part 249 of this chapter), annual or other reports under sections 13 and 15(d) (subparts D and E of part 249 of this chapter), going-private transaction statements under section 13 (part 240 of this chapter), tender offer statements under sections 13 and 14 (part 240 of this chapter), annual reports to security holders and proxy and information statements under section 14 (part 240 of this chapter), and any other documents required to be filed under the Exchange Act, to the extent provided in the forms and rules under that Act.

* * * * *

5. By adding subpart 229.1000 consisting of §§ 229.1000 through 229.1016 to read as follows:

Subpart 229.1000—Mergers and Acquisitions (Regulation M–A)

Sec.

Subpart 229.1000—Mergers and Acquisitions (Regulation M–A)

§ 229.1000 (Item 1000) Definitions.

The following definitions apply to the terms used in Regulation M–A (§§ 229.1000 through 229.1016), unless specified otherwise:

(a) *Associate* has the same meaning as in § 240.12b–2 of this chapter;

(b) *Instruction C* means General Instruction C to Schedule 13E–3 (§ 240.13e–100 of this chapter) and General Instruction C to Schedule TO (§ 240.14d–100 of this chapter);

(c) *Issuer tender offer* has the same meaning as in § 240.13e–4(a)(2) of this chapter;

(d) *Offeror* means any person who makes a tender offer or on whose behalf a tender offer is made;

(e) *Rule 13e–3 transaction* has the same meaning as in § 240.13e–3(a)(3) of this chapter;

(f) *Subject company* means the company or entity whose securities are sought to be acquired in the transaction (*e.g.*, the target), or that is otherwise the subject of the transaction;

(g) *Subject securities* means the securities or class of securities that are sought to be acquired in the transaction or that are otherwise the subject of the transaction; and

(h) *Third-party tender offer* means a tender offer that is not an issuer tender offer.

§ 229.1001 (Item 1001) Summary term sheet.

Summary term sheet. Provide security holders with a summary term sheet that is written in plain English. The summary term sheet must briefly describe in bullet point format the most material terms of the proposed transaction. The summary term sheet must provide security holders with sufficient information to understand the essential features and significance of the proposed transaction. The bullet points must cross-reference a more detailed discussion contained in the disclosure document that is disseminated to security holders.

Instructions to Item 1001:

1. The summary term sheet must not recite all information contained in the disclosure document that will be provided to security holders. The summary term sheet is intended to serve as an overview of all material matters that are presented in the accompanying documents provided to security holders.

2. The summary term sheet must begin on the first or second page of the disclosure document provided to security holders.

3. Refer to Rule 421(b) and (d) of Regulation C of the Securities Act (§ 230.421 of this chapter) for a description of plain English disclosure.

§ 229.1002 (Item 1002) Subject company information.

(a) *Name and address.* State the name of the subject company (or the issuer in the case of an issuer tender offer), and the address and telephone number of its principal executive offices.

(b) *Securities.* State the exact title and number of shares outstanding of the subject class of equity securities as of the most recent practicable date. This may be based upon information in the most recently available filing with the Commission by the subject company unless the filing person has more current information.

(c) *Trading market and price.* Identify the principal market in which the subject securities are traded and state the high and low sales prices for the subject securities in the principal market (or, if there is no principal market, the range of high and low bid quotations and the source of the quotations) for each quarter during the past two years. If there is no established trading market for the securities (except for limited or sporadic quotations), so state.

(d) *Dividends.* State the frequency and amount of any dividends paid during the past two years with respect to the subject securities. Briefly describe any restriction on the subject company's current or future ability to pay dividends. If the filing person is not the subject company, furnish this information to the extent known after making reasonable inquiry.

(e) *Prior public offerings.* If the filing person has made an underwritten public

offering of the subject securities for cash during the past three years that was registered under the Securities Act of 1933 or exempt from registration under Regulation A (§ 230.251 through § 230.263 of this chapter), state the date of the offering, the amount of securities offered, the offering price per share (adjusted for stock splits, stock dividends, etc. as appropriate) and the aggregate proceeds received by the filing person.

(f) *Prior stock purchases.* If the filing person purchased any subject securities during the past two years, state the amount of the securities purchased, the range of prices paid and the average purchase price for each quarter during that period. Affiliates need not give information for purchases made before becoming an affiliate.

§ 229.1003 (Item 1003) Identity and background of filing person.

(a) *Name and address.* State the name, business address and business telephone number of each filing person. Also state the name and address of each person specified in Instruction C to the schedule (except for Schedule 14D–9 (§ 240.14d–101 of this chapter)). If the filing person is an affiliate of the subject company, state the nature of the affiliation. If the filing person is the subject company, so state.

(b) *Business and background of entities.* If any filing person (other than the subject company) or any person specified in Instruction C to the schedule is not a natural person, state the person's principal business, state or other place of organization, and the information required by paragraphs (c)(3) and (c)(4) of this section for each person.

(c) *Business and background of natural persons.* If any filing person or any person specified in Instruction C to the schedule is a natural person, provide the following information for each person:

(1) Current principal occupation or employment and the name, principal business and address of any corporation or other organization in which the employment or occupation is conducted;

(2) Material occupations, positions, offices or employment during the past five years, giving the starting and ending dates of each and the name, principal business and address of any corporation or other organization in which the occupation, position, office or employment was carried on;

(3) A statement whether or not the person was convicted in a criminal proceeding during the past five years (excluding traffic violations or similar misdemeanors). If the person was convicted, describe the criminal proceeding, including the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

(4) A statement whether or not the person was a party to any judicial or administrative proceeding during the past five years (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining the person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws. Describe the proceeding, including a summary of the terms of the judgment, decree or final order; and

(5) Country of citizenship.

(d) *Tender offer.* Identify the tender offer and the class of securities to which the offer relates, the name of the offeror and its address (which may be based on the offeror's Schedule TO (§ 240.14d–100 of this chapter) filed with the Commission).

Instruction to Item 1003

If the filing person is making information relating to the transaction available on the Internet, state the address where the information can be found.

§ 229.1004 (Item 1004) Terms of the transaction.

(a) *Material terms.* State the material terms of the transaction.

(1) *Tender offers.* In the case of a tender offer, the information must include:

(i) The total number and class of securities sought in the offer;

(ii) The type and amount of consideration offered to security holders;

(iii) The scheduled expiration date;

(iv) Whether a subsequent offering period will be available, if the transaction is a third-party tender offer;

(v) Whether the offer may be extended, and if so, how it could be extended;

(vi) The dates before and after which security holders may withdraw securities tendered in the offer;

(vii) The procedures for tendering and withdrawing securities;

(viii) The manner in which securities will be accepted for payment;

(ix) If the offer is for less than all securities of a class, the periods for accepting securities on a pro rata basis and the offeror's present intentions in the event that the offer is oversubscribed;

(x) An explanation of any material differences in the rights of security holders as a result of the transaction, if material;

(xi) A brief statement as to the accounting treatment of the transaction, if material; and

(xii) The federal income tax consequences of the transaction, if material.

(2) *Mergers or similar transactions.* In the case of a merger or similar transaction, the information must include:

(i) A brief description of the transaction;

(ii) The consideration offered to security holders;

(iii) The reasons for engaging in the transaction;

(iv) The vote required for approval of the transaction;

(v) An explanation of any material differences in the rights of security holders as a result of the transaction, if material;

(vi) A brief statement as to the accounting treatment of the transaction, if material; and

(vii) The federal income tax consequences of the transaction, if material.

Instruction to Item 1004(a):

If the consideration offered includes securities exempt from registration under the Securities Act of 1933, provide a description of the securities that complies with Item 202 of Regulation S–K (§ 229.202). This description is not required if the issuer of the securities meets the requirements of General Instructions I.A, I.B.1 or I.B.2, as applicable, or I.C. of Form S–3 (§ 239.13 of this chapter) and elects to furnish information by incorporation by reference; only capital stock is to be issued; and securities of the same class are registered under section 12 of the Exchange Act and either are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association.

(b) *Purchases.* State whether any securities are to be purchased from any officer, director or affiliate of the subject company and provide the details of each transaction.

(c) *Different terms.* Describe any term or arrangement in the Rule 13e-3 transaction that treats any subject security holders differently from other subject security holders.

(d) *Appraisal rights.* State whether or not dissenting security holders are entitled to any appraisal rights. If so, summarize the appraisal rights. If there are no appraisal rights available under state law for security holders who object to the transaction, briefly outline any other rights that may be available to security holders under the law.

(e) *Provisions for unaffiliated security holders.* Describe any provision made

by the filing person in connection with the transaction to grant unaffiliated security holders access to the corporate files of the filing person or to obtain counsel or appraisal services at the expense of the filing person. If none, so state.

(f) *Eligibility for listing or trading.* If the transaction involves the offer of securities of the filing person in exchange for equity securities held by unaffiliated security holders of the subject company, describe whether or not the filing person will take steps to assure that the securities offered are or will be eligible for trading on an automated quotations system operated by a national securities association.

§ 229.1005 (Item 1005) Past contacts, transactions, negotiations and agreements.

(a) *Transactions.* Briefly state the nature and approximate dollar amount of any transaction, other than those described in paragraphs (b) or (c) of this section, that occurred during the past two years, between the filing person (including any person specified in Instruction C of the schedule) and;

(1) The subject company or any of its affiliates that are not natural persons if the aggregate value of the transactions is more than one percent of the subject company's consolidated revenues for:

(i) The fiscal year when the transaction occurred; or

(ii) The past portion of the current fiscal year, if the transaction occurred in the current year; and

Instruction to Item 1005(a)(1):

The information required by this Item may be based on information in the subject company's most recent filing with the Commission, unless the filing person has reason to believe the information is not accurate.

(2) Any executive officer, director or affiliate of the subject company that is a natural person if the aggregate value of the transaction or series of similar transactions with that person exceeds $60,000.

(b) *Significant corporate events.* Describe any negotiations, transactions or material contacts during the past two years between the filing person (including subsidiaries of the filing person and any person specified in Instruction C of the schedule) and the subject company or its affiliates concerning any:

(1) Merger;

(2) Consolidation;

(3) Acquisition;

(4) Tender offer for or other acquisition of any class of the subject company's securities;

(5) Election of the subject company's directors; or

(6) Sale or other transfer of a material amount of assets of the subject company.

(c) *Negotiations or contacts.* Describe any negotiations or material contacts concerning the matters referred to in paragraph (b) of this section during the past two years between:

(1) Any affiliates of the subject company; or

(2) The subject company or any of its affiliates and any person not affiliated with the subject company who would have a direct interest in such matters.

Instruction to paragraphs (b) and (c) of Item 1005

Identify the person who initiated the contacts or negotiations.

(d) *Conflicts of interest.* If material, describe any agreement, arrangement or understanding and any actual or potential conflict of interest between the filing person or its affiliates and:

(1) The subject company, its executive officers, directors or affiliates; or

(2) The offeror, its executive officers, directors or affiliates.

Instruction to Item 1005(d)

If the filing person is the subject company, no disclosure called for by this paragraph is required in the document disseminated to security holders, so long as substantially the same information was filed with the Commission previously and disclosed in a proxy statement, report or other communication sent to security holders by the subject company in the past year. The document disseminated to security holders, however, must refer specifically to the discussion in the proxy statement, report or other communication that was sent to security holders previously. The information also must be filed as an exhibit to the schedule.

(e) *Agreements involving the subject company's securities.* Describe any agreement, arrangement, or understanding, whether or not legally enforceable, between the filing person (including any person specified in Instruction C of the schedule) and any other person with respect to any securities of the subject company. Name all persons that are a party to the agreements, arrangements, or understandings and describe all material provisions.

Instructions to Item 1005(e)

1. The information required by this Item includes: the transfer or voting of securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or the giving or withholding of proxies, consents or authorizations.

2. Include information for any securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of the subject securities. No disclosure, however, is required about standard default and similar provisions contained in loan agreements.

§ 229.1006 (Item 1006) Purposes of the transaction and plans or proposals.

(a) *Purposes.* State the purposes of the transaction.

(b) *Use of securities acquired.* Indicate whether the securities acquired in the transaction will be retained, retired, held in treasury, or otherwise disposed of.

(c) *Plans.* Describe any plans, proposals or negotiations that relate to or would result in:

(1) Any extraordinary transaction, such as a merger, reorganization or liquidation, involving the subject company or any of its subsidiaries;

(2) Any purchase, sale or transfer of a material amount of assets of the subject company or any of its subsidiaries;

(3) Any material change in the present dividend rate or policy, or indebtedness or capitalization of the subject company;

(4) Any change in the present board of directors or management of the subject company, including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board or to change any material term of the employment contract of any executive officer;

(5) Any other material change in the subject company's corporate structure or business, including, if the subject company is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by Section 13 of the Investment Company Act of 1940 (15 U.S.C. 80a–13);

(6) Any class of equity securities of the subject company to be delisted from a national securities exchange or cease to be authorized to be quoted in an automated quotations system operated by a national securities association;

(7) Any class of equity securities of the subject company becoming eligible for termination of registration under section 12(g)(4) of the Act (15 U.S.C. 78*l*);

(8) The suspension of the subject company's obligation to file reports under Section 15(d) of the Act (15 U.S.C. 78o);

(9) The acquisition by any person of additional securities of the subject company, or the disposition of securities of the subject company; or

(10) Any changes in the subject company's charter, bylaws or other governing instruments or other actions that could impede the acquisition of control of the subject company.

(d) *Subject company negotiations.* If the filing person is the subject company:

(1) State whether or not that person is undertaking or engaged in any negotiations in response to the tender offer that relate to:

(i) A tender offer or other acquisition of the subject company's securities by the filing person, any of its subsidiaries, or any other person; or

(ii) Any of the matters referred to in paragraphs (c)(1) through (c)(3) of this section; and

(2) Describe any transaction, board resolution, agreement in principle, or signed contract that is entered into in response to the tender offer that relates to one or more of the matters referred to in paragraph (d)(1) of this section.

Instruction to Item 1006(d)(1)

If an agreement in principle has not been reached at the time of filing, no disclosure under paragraph (d)(1) of this section is required of the possible terms of or the parties to the transaction if in the opinion of the board of directors of the subject company disclosure would jeopardize continuation of the negotiations. In that case, disclosure indicating that negotiations are being undertaken or are underway and are in the preliminary stages is sufficient.

§ 229.1007 (Item 1007) Source and amount of funds or other consideration.

(a) *Source of funds.* State the specific sources and total amount of funds or other consideration to be used in the transaction. If the transaction involves a tender offer, disclose the amount of funds or other consideration required to purchase the maximum amount of securities sought in the offer.

(b) *Conditions.* State any material conditions to the financing discussed in response to paragraph (a) of this section. Disclose any alternative financing arrangements or alternative financing plans in the event the primary financing plans fall through. If none, so state.

(c) *Expenses.* Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the transaction including, but not limited to, filing, legal, accounting and appraisal fees, solicitation expenses and printing costs and state whether or not the subject company has paid or will be responsible for paying any or all expenses.

(d) *Borrowed funds.* If all or any part of the funds or other consideration required is, or is expected, to be borrowed, directly or indirectly, for the purpose of the transaction:

(1) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and any other material terms or conditions of the loan; and

(2) Briefly describe any plans or arrangements to finance or repay the loan, or, if no plans or arrangements have been made, so state.

Instruction to Item 1007(d):

If the transaction is a third-party tender offer and the source of all or any part of the funds used in the transaction is to come from a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act (15 U.S.C. 78c), the name of the bank will not be made available to the public if the filing person so requests in writing and files the request, naming the bank, with the Secretary of the Commission.

§ 229.1008 (Item 1008) Interest in securities of the subject company.

(a) *Securities ownership.* State the aggregate number and percentage of subject securities that are beneficially owned by each person named in response to Item 1003 of Regulation M–A (§ 229.1003) and by each associate and majority-owned subsidiary of those persons. Give the name and address of any associate or subsidiary.

Instructions to Item 1008(a)

1. For purposes of this section, beneficial ownership is determined in accordance with Rule 13d–3 (§ 240.13d–3 of this chapter) under the Exchange Act. Identify the shares that the person has a right to acquire.

2. The information required by this section may be based on the number of outstanding securities disclosed in the subject company's most recently available filing with the Commission, unless the filing person has more current information.

3. The information required by this section with respect to officers, directors and associates of the subject company must be given to the extent known after making reasonable inquiry.

(b) *Securities transactions.* Describe any transaction in the subject securities during the past 60 days. The description of transactions required must include, but not necessarily be limited to:

(1) The identity of the persons specified in the Instruction to this section who effected the transaction;

(2) The date of the transaction;

(3) The amount of securities involved;

(4) The price per share; and

(5) Where and how the transaction was effected.

Instructions to Item 1008(b)

1. Provide the required transaction information for the following persons:

(a) The filing person (for all schedules);

(b) Any person named in Instruction C of the schedule and any associate or majority-owned subsidiary of the issuer or filing person (for all schedules except Schedule 14D–9 (§ 240.14d–101 of this chapter));

(c) Any executive officer, director, affiliate or subsidiary of the filing person (for Schedule 14D–9 (§ 240.14d–101 of this chapter);

(d) The issuer and any executive officer or director of any subsidiary of the issuer or filing person (for an issuer tender offer on Schedule TO (§ 240.14d–100 of this chapter)); and

(e) The issuer and any pension, profit-sharing or similar plan of the issuer or affiliate filing the schedule (for a going-private transaction on Schedule 13E–3 (§ 240.13e–100 of this chapter)).

2. Provide the information required by this Item if it is available to the filing person at the time the statement is initially filed with the Commission. If the information is not initially available, it must be obtained and filed with the Commission promptly, but in no event later than three business days after the date of the initial filing, and if material, disclosed in a manner reasonably designed to inform security holders. The procedure specified by this instruction is provided to maintain the confidentiality of information in order to avoid possible misuse of inside information.

§ 229.1009 (Item 1009) Persons/assets, retained, employed, compensated or used.

(a) *Solicitations or recommendations.* Identify all persons and classes of persons that are directly or indirectly employed, retained, or to be compensated to make solicitations or recommendations in connection with the transaction. Provide a summary of all material terms of employment, retainer or other arrangement for compensation.

(b) *Employees and corporate assets.* Identify any officer, class of employees or corporate assets of the subject company that has been or will be employed or used by the filing person in connection with the transaction. Describe the purpose for their employment or use.

Instruction to Item 1009(b):

Provide all information required by this Item except for the information required by paragraph (a) of this section and Item 1007 of Regulation M–A (§ 229.1007).

§ 229.1010 (Item 1010) Financial statements.

(a) *Financial information.* Furnish the following financial information:

(1) Audited financial statements for the two fiscal years required to be filed with the company's most recent annual report under sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m; 15 U.S.C. 78o);

(2) Unaudited balance sheets, comparative year-to-date income statements and related earnings per share data, statements of cash flows, and comprehensive income required to be included in the company's most recent quarterly report filed under the Exchange Act;

(3) Ratio of earnings to fixed charges, computed in a manner consistent with Item 503(d) of Regulation S–K (§ 229.503(d)), for the two most recent fiscal years and the interim periods provided under paragraph (a)(2) of this section; and

(4) Book value per share as of the date of the most recent balance sheet presented.

(b) *Pro forma information.* If material, furnish pro forma information disclosing the effect of the transaction on:

(1) The company's balance sheet as of the date of the most recent balance sheet presented under paragraph (a) of this section;

(2) The company's statement of income, earnings per share, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period provided under paragraph (a)(2) of this section; and

(3) The company's book value per share as of the date of the most recent balance sheet presented under paragraph (a) of this section.

(c) *Summary information.* Furnish a fair and adequate summary of the information specified in paragraphs (a) and (b) of this section for the same periods specified. A fair and adequate summary includes:

(1) The summarized financial information specified in § 210.1–02(bb)(1) of this chapter;

(2) Income per common share from continuing operations (basic and diluted, if applicable);

(3) Net income per common share (basic and diluted, if applicable);

(4) Ratio of earnings to fixed charges, computed in a manner consistent with Item 503(d) of Regulation S–K (§ 229.503(d));

(5) Book value per share as of the date of the most recent balance sheet; and

(6) If material, pro forma data for the summarized financial information specified in paragraphs (c)(1) through (c)(5) of this section disclosing the effect of the transaction.

§ 229.1011 (Item 1011) Additional information.

(a) *Agreements, regulatory requirements and legal proceedings.* If material to a security holder's decision whether to sell, tender or hold the securities sought in the tender offer, furnish the following information:

(1) Any present or proposed material agreement, arrangement, understanding or relationship between the offeror or any of its executive officers, directors, controlling persons or subsidiaries and the subject company or any of its executive officers, directors, controlling persons or subsidiaries (other than any agreement, arrangement or understanding disclosed under any other sections of Regulation M–A (§§ 229.1000 through 229.1016));

Instruction to paragraph (a)(1):

In an issuer tender offer disclose any material agreement, arrangement, understanding or relationship between the offeror and any of its executive officers, directors, controlling persons or subsidiaries.

(2) To the extent known by the offeror after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(3) The applicability of any anti-trust laws;

(4) The applicability of margin requirements under section 7 of the Act (15 U.S.C. 78g) and the applicable regulations; and

(5) Any material pending legal proceedings relating to the tender offer, including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties, and a brief summary of the proceedings and the relief sought.

Instruction to Item 1011(a)(5):

A copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding must be furnished promptly to the Commission staff on a supplemental basis.

(b) *Other material information.* Furnish such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

§ 229.1012 (Item 1012) The solicitation or recommendation.

(a) *Solicitation or recommendation.* State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the filing person is advising holders of the subject securities to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, describe the other action recommended. If the filing person is the subject company and is not making a recommendation, state whether the subject company is expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) *Reasons.* State the reasons for the position (including the inability to take a position) stated in paragraph (a) of this section. Conclusory statements such as ''The tender offer is in the best interests of shareholders'' are not considered sufficient disclosure.

(c) *Intent to tender.* To the extent known by the filing person after making reasonable inquiry, state whether the filing person or any executive officer, director, affiliate or subsidiary of the filing person currently intends to tender, sell or hold the subject securities that are held of record or beneficially owned by that person.

(d) *Intent to tender or vote in a going-private transaction.* To the extent known by the filing person after making reasonable inquiry, state whether or not any executive officer, director or affiliate of the issuer (or any person specified in Instruction C to the schedule) currently intends to tender or sell subject securities owned or held by that person and/or how each person currently intends to vote subject securities, including any securities the person has proxy authority for. State the reasons for the intended action.

Instruction to Item 1012(d):

Provide the information required by this section if it is available to the filing person at the time the statement is initially filed with the Commission. If the information is not available, it must be filed with the Commission promptly, but in no event later than three business days after the date of the initial filing, and if material, disclosed in a manner reasonably designed to inform security holders.

(e) *Recommendations of others.* To the extent known by the filing person after making reasonable inquiry, state whether or not any person specified in paragraph (d) of this section has made a recommendation either in support of or opposed to the transaction and the reasons for the recommendation.

§ 229.1013 (Item 1013) Purposes, alternatives, reasons and effects in a going-private transaction.

(a) *Purposes.* State the purposes for the Rule 13e–3 transaction.

(b) *Alternatives.* If the subject company or affiliate considered alternative means to accomplish the stated purposes, briefly describe the alternatives and state the reasons for their rejection.

(c) *Reasons.* State the reasons for the structure of the Rule 13e–3 transaction and for undertaking the transaction at this time.

(d) *Effects.* Describe the effects of the Rule 13e–3 transaction on the subject company, its affiliates and unaffiliated security holders, including the federal tax consequences of the transaction.

Instructions to Item 1013:

1. Conclusory statements will not be considered sufficient disclosure in response to this section.

2. The description required by paragraph (d) of this section must include a reasonably detailed discussion of both the benefits and detriments of the Rule 13e–3 transaction to the subject company, its affiliates and unaffiliated security holders. The benefits and detriments of the Rule 13e–3 transaction must be quantified to the extent practicable.

3. If this statement is filed by an affiliate of the subject company, the description required by paragraph (d) of this section must include, but not be limited to, the effect of the Rule 13e–3 transaction on the affiliate's interest in the net book value and net earnings of the subject company in terms of both dollar amounts and percentages.

§ 229.1014 (Item 1014) Fairness of the going-private transaction.

(a) *Fairness.* State whether the subject company or affiliate filing the statement reasonably believes that the Rule 13e–3 transaction is fair or unfair to unaffiliated security holders. If any director dissented to or abstained from voting on the Rule 13e–3 transaction, identify the director, and indicate, if known, after making reasonable inquiry, the reasons for the dissent or abstention.

(b) *Factors considered in determining fairness.* Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this section is based and, to the extent practicable, the weight assigned to each factor. The discussion must include an analysis of the extent, if any, to which the filing person's beliefs are based on the factors described in Instruction 2 of this section, paragraphs (c), (d) and (e) of this section and Item 1015 of Regulation M–A (§ 229.1015).

(c) *Approval of security holders.* State whether or not the transaction is structured so that approval of at least a majority of unaffiliated security holders is required.

(d) *Unaffiliated representative.* State whether or not a majority of directors who are not employees of the subject company has retained an unaffiliated representative to act solely on behalf of unaffiliated security holders for purposes of negotiating the terms of the Rule 13e–3 transaction and/or preparing a report concerning the fairness of the transaction.

(e) *Approval of directors.* State whether or not the Rule 13e–3 transaction was approved by a majority of the directors of the subject company who are not employees of the subject company.

(f) *Other offers.* If any offer of the type described in paragraph (viii) of Instruction 2 to this section has been received, describe the offer and state the reasons for its rejection.

Instructions to Item 1014:

1. A statement that the issuer or affiliate has no reasonable belief as to the fairness of the Rule 13e–3 transaction to unaffiliated security holders will not be considered sufficient disclosure in response to paragraph (a) of this section.

2. The factors that are important in determining the fairness of a transaction to unaffiliated security holders and the weight, if any, that should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraphs (c), (d) and (e) of this section and whether the consideration offered to unaffiliated security holders constitutes fair value in relation to:

(i) Current market prices;

(ii) Historical market prices;

(iii) Net book value;

(iv) Going concern value;

(v) Liquidation value;

(vi) Purchase prices paid in previous purchases disclosed in response to Item 1002(f) of Regulation M–A (§ 229.1002(f));

(vii) Any report, opinion, or appraisal described in Item 1015 of Regulation M–A (§ 229.1015); and

(viii) Firm offers of which the subject company or affiliate is aware made by any unaffiliated person, other than the filing persons, during the past two years for:

(A) The merger or consolidation of the subject company with or into another company, or *vice versa;*

(B) The sale or other transfer of all or any substantial part of the assets of the subject company; or

(C) A purchase of the subject company's securities that would enable the holder to exercise control of the subject company.

3. Conclusory statements, such as ''The Rule 13e–3 transaction is fair to unaffiliated security holders in relation to net book value, going concern value and future prospects of the issuer'' will not be considered sufficient disclosure in response to paragraph (b) of this section.

§ 229.1015 (Item 1015) Reports, opinions, appraisals and negotiations.

(a) *Report, opinion or appraisal.* State whether or not the subject company or affiliate has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party that is materially related to the Rule 13e–3 transaction, including, but not limited to: Any report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to security holders or the fairness of the transaction to the issuer or affiliate or to security holders who are not affiliates.

(b) *Preparer and summary of the report, opinion or appraisal.* For each report, opinion or appraisal described in response to paragraph (a) of this section or any negotiation or report described in response to Item 1014(d) of Regulation M–A (§ 229.1014) or Item 14(b)(6) of Schedule 14A (§ 240.14a–101 of this chapter) concerning the terms of the transaction:

(1) Identify the outside party and/or unaffiliated representative;

(2) Briefly describe the qualifications of the outside party and/or unaffiliated representative;

(3) Describe the method of selection of the outside party and/or unaffiliated representative;

(4) Describe any material relationship that existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of the relationship between:

(i) The outside party, its affiliates, and/or unaffiliated representative; and

(ii) The subject company or its affiliates;

(5) If the report, opinion or appraisal relates to the fairness of the consideration, state whether the subject company or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid; and

(6) Furnish a summary concerning the negotiation, report, opinion or appraisal. The summary must include, but need not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the subject company or affiliate; and any limitation imposed by the subject company or affiliate on the scope of the investigation.

Instruction to Item 1015(b):

The information called for by paragraphs (b)(1), (2) and (3) of this section must be given with respect to the firm that provides the report, opinion or appraisal rather than the employees of the firm that prepared the report.

(c) *Availability of documents.* Furnish a statement to the effect that the report, opinion or appraisal will be made available for inspection and copying at the principal executive offices of the subject company or affiliate during its regular business hours by any interested equity security holder of the subject company or representative who has been so designated in writing. This statement also may provide that a copy of the report, opinion or appraisal will be transmitted by the subject company or affiliate to any interested equity security holder of the subject company or representative who has been so designated in writing upon written request and at the expense of the requesting security holder.

§ 229.1016 (Item 1016) Exhibits.

File as an exhibit to the schedule:

(a) Any disclosure materials furnished to security holders by or on behalf of the filing person, including:

(1) Tender offer materials (including transmittal letter);

(2) Solicitation or recommendation (including those referred to in Item 1012 of Regulation M–A (§ 229.1012));

(3) Going-private disclosure document;

(4) Prospectus used in connection with an exchange offer where securities are registered under the Securities Act of 1933; and

(5) Any other disclosure materials;

(b) Any loan agreement referred to in response to Item 1007(d) of Regulation M–A (§ 229.1007(d));

Instruction to Item 1016(b):
If the filing relates to a third-party tender offer and a request is made under Item 1007(d) of Regulation M–A (§ 229.1007(d)), the identity of the bank providing financing may be omitted from the loan agreement filed as an exhibit.

(c) Any report, opinion or appraisal referred to in response to Item 1014(d) or Item 1015 of Regulation M–A (§ 229.1014(d) or § 229.1015);

(d) Any document setting forth the terms of any agreement, arrangement, understanding or relationship referred to in response to Item 1005(e) or Item 1011(a)(1) of Regulation M–A (§ 229.1005(e) or § 229.1011(a)(1));

(e) Any agreement, arrangement or understanding referred to in response to § 229.1005(d), or the pertinent portions of any proxy statement, report or other communication containing the disclosure required by Item 1005(d) of Regulation M–A (§ 229.1005(d));

(f) A detailed statement describing security holders' appraisal rights and the procedures for exercising those appraisal rights referred to in response to Item 1004(d) of Regulation M–A (§ 229.1004(d));

(g) Any written instruction, form or other material that is furnished to persons making an oral solicitation or recommendation by or on behalf of the filing person for their use directly or indirectly in connection with the transaction; and

(h) Any written opinion prepared by legal counsel at the filing person's request and communicated to the filing person pertaining to the tax consequences of the transaction.

EXHIBIT TABLE TO ITEM 1016 OF REGULATION M–A [13E–3 TO 14D–9]

Disclosure Material	X	X	X
Loan Agreement	X	X	.....
Report, Opinion or Appraisal	X	.....	.....
Contracts, Arrangements or Understandings	X	X	X
Statement re: Appraisal Rights	X	.....	.....
Oral Solicitation Materials	X	X	X
Tax Opinion	.....	X	.....

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

6. The authority citation for part 230 is revised to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

7. By revising § 230.135 to read as follows:

§ 230.135 Notice of proposed registered offerings.

(a) *When notice is not an offer.* For purposes of section 5 of the Act (15 U.S.C. 77e) only, an issuer or a selling security holder (and any person acting on behalf of either of them) that publishes through any medium a notice of a proposed offering to be registered under the Act will not be deemed to offer its securities for sale through that notice if:

(1) *Legend.* The notice includes a statement to the effect that it does not constitute an offer of any securities for sale; and

(2) *Limited notice content.* The notice otherwise includes no more than the following information:

(i) The name of the issuer;

(ii) The title, amount and basic terms of the securities offered;

(iii) The amount of the offering, if any, to be made by selling security holders;

(iv) The anticipated timing of the offering;

(v) A brief statement of the manner and the purpose of the offering, without naming the underwriters;

(vi) Whether the issuer is directing its offering to only a particular class of purchasers;

(vii) Any statements or legends required by the laws of any state or foreign country or administrative authority; and

(viii) In the following offerings, the notice may contain additional information, as follows:

(A) *Rights offering.* In a rights offering to existing security holders:

(*1*) The class of security holders eligible to subscribe;

(*2*) The subscription ratio and expected subscription price;

(*3*) The proposed record date;

(*4*) The anticipated issuance date of the rights; and

(*5*) The subscription period or expiration date of the rights offering.

(B) *Offering to employees.* In an offering to employees of the issuer or an affiliated company:

(*1*) The name of the employer;

(*2*) The class of employees being offered the securities;

(*3*) The offering price; and

(*4*) The duration of the offering period.

(*C*) *Exchange offer.* In an exchange offer:

(*1*) The basic terms of the exchange offer;

(*2*) The name of the subject company;

(*3*) The subject class of securities sought in the exchange offer.

(D) *Rule 145(a) offering.* In a § 230.145(a) offering:

(*1*) The name of the person whose assets are to be sold in exchange for the securities to be offered;

(*2*) The names of any other parties to the transaction;

(*3*) A brief description of the business of the parties to the transaction;

(*4*) The date, time and place of the meeting of security holders to vote on or consent to the transaction; and

(*5*) A brief description of the transaction and the basic terms of the transaction.

(b) *Corrections of misstatements about the offering.* A person that publishes a notice in reliance on this section may issue a notice that contains no more information than is necessary to correct inaccuracies published about the proposed offering.

Note to § 230.135: Communications under this section relating to business combination transactions must be filed as required by § 230.425(b).

8. By amending § 230.145 by revising paragraph (b) to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

* * * * *

(b) *Communications before a Registration Statement is filed.* Communications made in connection with or relating to a transaction described in paragraph (a) of this section that will be registered under the Act may be made under § 230.135, § 230.165 or § 230.166.

* * * * *

9. By adding § 230.162 to read as follows:

§ 230.162 Submission of tenders in registered exchange offers.

(a) Notwithstanding section 5(a) of the Act (15 U.S.C. 77e(a)), offerors may solicit tenders of securities in an exchange offer subject to § 240.13e–4(e) or § 240.14d–4(b) of this chapter before a registration statement is effective as to the security offered, so long as no securities are purchased until the registration statement is effective and the tender offer has expired in accordance with the tender offer rules.

(b) Notwithstanding section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)), a prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) need not be delivered to security holders in an exchange offer subject to § 240.13e–4(e) or § 240.14d–4(b) of this chapter, so long as a preliminary prospectus, prospectus supplements and revised prospectuses are delivered to security holders in accordance with § 240.13e–4(e)(2) or § 240.14d–4(b) of this chapter, as applicable.

10. By adding § 230.165 to read as follows:

§ 230.165 Offers made in connection with a business combination transaction.

Preliminary Note: This section is available only to communications relating to business combinations. The exemption does not apply to communications that may be in technical compliance with this section, but have the primary purpose or effect of conditioning the market for another transaction, such as a capital-raising or resale transaction.

(a) *Communications before a registration statement is filed.* Notwithstanding section 5(c) of the Act (15 U.S.C. 77e(c)), the offeror of securities in a business combination transaction to be registered under the Act may make an offer to sell or solicit an offer to buy those securities from and including the first public announcement until the filing of a registration statement related to the transaction, so long as any written communication (other than non-public communications among participants) made in connection with or relating to the transaction (*i.e.*, prospectus) is filed in accordance with § 230.425 and the conditions in paragraph (c) of this section are satisfied.

(b) *Communications after a registration statement is filed.* Notwithstanding section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), any written communication (other than non-public communications among participants) made in connection with or relating to a business combination transaction (*i.e.*, prospectus) after the filing of a registration statement related to the transaction need not satisfy the requirements of section 10 (15 U.S.C. 77j) of the Act, so long as the prospectus is filed in accordance with § 230.424 or § 230.425 and the conditions in paragraph (c) of this section are satisfied.

(c) *Conditions.* To rely on paragraphs (a) and (b) of this section:

(1) Each prospectus must contain a prominent legend that urges investors to read the relevant documents filed or to be filed with the Commission because they contain important information. The legend also must explain to investors that they can get the documents for free at the Commission's web site and describe which documents are available free from the offeror; and

(2) In an exchange offer, the offer must be made in accordance with the applicable tender offer rules (§§ 240.14d–1 through 240.14e–8 of this chapter); and, in a transaction involving the vote of security holders, the offer must be made in accordance with the applicable proxy or information statement rules (§§ 240.14a–1 through 240.14a–101 and §§ 240.14c–1 through 240.14c–101 of this chapter).

(d) *Applicability.* This section is applicable not only to the offeror of securities in a business combination transaction, but also to any other participant that may need to rely on and complies with this section in communicating about the transaction.

(e) *Failure to file or delay in filing.* An immaterial or unintentional failure to file or delay in filing a prospectus described in this section will not result in a violation of section 5(b)(1) or (c) of the Act (15 U.S.C. 77e(b)(1) and (c)), so long as:

(1) A good faith and reasonable effort was made to comply with the filing requirement; and

(2) The prospectus is filed as soon as practicable after discovery of the failure to file.

(f) *Definitions.*

(1) A *business combination transaction* means any transaction specified in § 230.145(a) or exchange offer;

(2) A *participant* is any person or entity that is a party to the business combination transaction and any persons authorized to act on their behalf; and

(3) *Public announcement* is any oral or written communication by a participant that is reasonably designed to, or has the effect of, informing the public or security holders in general about the business combination transaction.

11. By adding § 230.166 to read as follows:

§ 230.166 Exemption from section 5(c) for certain communications in connection with business combination transactions.

Preliminary Note: This section is available only to communications relating to business combinations. The exemption does not apply to communications that may be in technical compliance with this section, but have the primary purpose or effect of conditioning the market for another transaction, such as a capital-raising or resale transaction.

(a) *Communications.* In a registered offering involving a business combination transaction, any communication made in connection with or relating to the transaction before the first public announcement of the offering will not constitute an offer to sell or a solicitation of an offer to buy the securities offered for purposes of section 5(c) of the Act (15 U.S.C. 77e(c)), so long as the participants take all reasonable steps within their control to prevent further distribution or publication of the communication until either the first public announcement is made or the registration statement related to the transaction is filed.

(b) *Definitions.* The terms business combination transaction, participant and public announcement have the same meaning as set forth in § 230.165(f).

12. By adding § 230.425 to read as follows:

§ 230.425 Filing of certain prospectuses and communications under § 230.135 in connection with business combination transactions.

(a) All written communications made in reliance on § 230.165 are prospectuses that must be filed with the Commission under this section on the date of first use.

(b) All written communications that contain no more information than that specified in § 230.135 must be filed with the Commission on or before the date of first use except as provided in paragraph (d)(1) of this section. A communication limited to the information specified in § 230.135 will

not be deemed an offer in accordance with § 230.135 even though it is filed under this section.

(c) Each prospectus or § 230.135 communication filed under this section must identify the filer, the company that is the subject of the offering and the Commission file number for the related registration statement or, if that file number is unknown, the subject company's Exchange Act or Investment Company Act file number, in the upper right corner of the cover page.

(d) Notwithstanding paragraph (a) of this section, the following need not be filed under this section:

(1) Any written communication that is limited to the information specified in § 230.135 and does not contain new or different information from that which was previously publicly disclosed and filed under this section.

(2) Any research report used in reliance on § 230.137, § 230.138 and § 230.139;

(3) Any confirmation described in § 240.10b–10 of this chapter; and

(4) Any prospectus filed under § 230.424.

Notes to § 230.425: 1. File five copies of the prospectus or § 230.135 communication if paper filing is permitted.

2. No filing is required under § 240.13e–4(c), § 240.14a–12(b), § 240.14d–2(b), or § 240.14d–9(a), if the communication is filed under this section. Communications filed under this section also are deemed filed under the other applicable sections.

13. By revising § 230.432 to read as follows:

§ 230.432 Additional information required to be included in prospectuses relating to tender offers.

Notwithstanding the provisions of any form for the registration of securities under the Act, any prospectus relating to securities to be offered in connection with a tender offer for, or a request or invitation for tenders of, securities subject to either § 240.13e–4 or section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)) must include the information required by § 240.13e–4(d)(1) or § 240.14d–6(d)(1) of this chapter, as applicable, in all tender offers, requests or invitations that are published, sent or given to security holders.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

14. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

§ 232.13 [Amended]

15. By amending § 232.13 in the first sentence of paragraph (d) by removing the phrase ''may be 'mailed for filing with the Commission' at the same time'' and adding in its place ''must be filed on the same day'' and by removing the phrase ''on a business day'' and adding in its place ''during the official business hours''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

16. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

§ 239.25 (Form S–4 [Amended]

* * * * *

17. By amending Form S–4 (referenced in § 239.25) by revising paragraph (b)(7) of Item 17 to read as follows:

[**Note:** Form S–4 does not and this amendment will not appear in the Code of Federal Regulations.]

Form S–4

* * * * *

Item 17. Information With Respect to Companies Other Than S–3 or S–2 Companies.

* * * * *

(b) * * **

(7) Financial statements that would be required in an annual report sent to security holders under Rules 14a–3(b)(1) and (b)(2) (§ 240.14b–3 of this chapter), if an annual report was required. If the registrant's security holders are not voting, the transaction is not a roll-up transaction (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)), and:

(i) The company being acquired is significant to the registrant in excess of the 20% level as determined under § 210.3–05(b)(2), provide financial statements of the company being acquired for the latest fiscal year in conformity with GAAP. In addition, if the company being acquired has provided its security holders with financial statements prepared in conformity with GAAP for either or both of the two fiscal years before the latest fiscal year, provide the financial statements for those years; or

(ii) The company being acquired is significant to the registrant at or below the 20% level, no financial information (including pro forma and comparative per share information) for the company being acquired need be provided.

Instructions:

1. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

2. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. when the financial statements are prepared on a basis other than U.S. GAAP.

3. If this Form is used to register resales to the public by any person who is deemed an underwriter within the meaning of Rule 145(c) (§ 230.145(c) of this chapter) with respect to the securities being reoffered, the financial statements must be audited for the fiscal years required to be presented under paragraph (b)(2) of Rule 3–05 of Regulation S–X (17 CFR 210.3–05(b)(2)).

4. In determining the significance of an acquisition for purposes of this paragraph, apply the tests prescribed in Rule 1–02(w) (§ 210.1–02(w) of this chapter).

* * * * *

§ 239.34 (Form F–4) [Amended]

18. By amending Form F–4 (referenced in § 239.34) by revising paragraph (b)(5) of Item 17, removing the instruction at the end of Item 17 and in its place adding a new instruction to paragraphs (b)(5) and (b)(6) to read as follows:

[**Note:** Form F–4 does not and this amendment will not appear in the Code of Federal Regulations.]

Form F–4

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F–2 or F–3 Companies.

* * * * *

(b) * * *

(5) Financial statements that would have been required to be included in an annual report on Form 20–F (§ 249.220f of this chapter) had the company being acquired been required to prepare such a report. If the registrant's security holders are not voting, the transaction is not a roll-up transaction (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)), and:

(i) The company being acquired is significant to the registrant in excess of the 20% level as determined under § 210.3–05(b)(2), provide financial statements of the company being acquired for the latest fiscal year in conformity with GAAP. In addition, if the company being acquired has provided its security holders with financial statements prepared in conformity with GAAP for either or both of the two fiscal years before the latest fiscal year, provide the financial statements for those years; or

(ii) the company being acquired is significant to the registrant at or below the 20% level, no financial information

(including pro forma and comparative per share information) for the company being acquired need be provided.

Instructions:

1. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

2. If this Form is used to register resales to the public by any person who is deemed an underwriter within the meaning of Rule 145(c) (§ 230.145(c) of this chapter) with respect to the securities being reoffered, the financial statements must be audited for the fiscal years required to be presented under paragraph (b)(2) of Rule 3–05 of Regulation S–X (17 CFR 210.3–05(b)(2)).

3. In determining the significance of an acquisition for purposes of this paragraph, apply the tests prescribed in Rule 1–02(w) (§ 210.1–02(w) of this chapter).

* * * * *

Instruction to paragraphs (b)(5) and (b)(6): If the financial statements required by paragraphs (b)(5) and (b)(6) are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. when the financial statements are prepared on a basis other than U.S. GAAP.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

19. 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, 78*l*, 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.

§ 240.10b–13 [Removed and reserved]

20. By removing and reserving § 240.10b–13.

21. By revising § 240.13e–1 to read as follows:

§ 240.13e–1 Purchase of securities by the issuer during a third-party tender offer.

An issuer that has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Act (15 U.S.C. 78n), that has commenced under § 240.14d–2 must not purchase any of its equity securities during the tender offer unless the issuer first:

(a) Files a statement with the Commission containing the following information:

(1) The title and number of securities to be purchased;

(2) The names of the persons or classes of persons from whom the issuer will purchase the securities;

(3) The name of any exchange, inter-dealer quotation system or any other market on or through which the securities will be purchased;

(4) The purpose of the purchase;

(5) Whether the issuer will retire the securities, hold the securities in its treasury, or dispose of the securities. If the issuer intends to dispose of the securities, describe how it intends to do so; and

(6) The source and amount of funds or other consideration to be used to make the purchase. If the issuer borrows any funds or other consideration to make the purchase or enters any agreement for the purpose of acquiring, holding, or trading the securities, describe the transaction and agreement and identify the parties; and

(b) Pays the fee required by § 240.0–11 when it files the initial statement.

(c) This section does not apply to periodic repurchases in connection with an employee benefit plan or other similar plan of the issuer so long as the purchases are made in the ordinary course and not in response to the tender offer.

Instruction to § 240.13e–1:

File eight copies if paper filing is permitted.

22. By amending § 240.13e–3 as follows:

a. By revising paragraphs (d) and (e);

b. Revising the heading of paragraph (f);

c. Removing the reference ''Chapter X'' in paragraph (g)(5) and in its place add ''Chapter XI'';

d. Removing the reference ''section 174'' in paragraph (g)(5) and in its place adding ''section 1125(b)''; and

e. Removing the reference ''section 175 of the Act'' in paragraph (g)(5) and in its place adding ''section 1125(b) of that Act''.

The revisions to § 240.13e–3 read as follows:

§ 240.13e–3 Going private transactions by certain issuers or their affiliates.

* * * * *

(d) *Material required to be filed.* The issuer or affiliate engaging in a Rule 13e–3 transaction must file with the Commission:

(1) A Schedule 13E–3 (§ 240.13e–100), including all exhibits;

(2) An amendment to Schedule 13E–3 reporting promptly any material changes in the information set forth in the schedule previously filed; and

(3) A final amendment to Schedule 13E–3 reporting promptly the results of the Rule 13e–3 transaction.

(e) *Disclosure of information to security holders.*

(1) In addition to disclosing the information required by any other applicable rule or regulation under the federal securities laws, the issuer or affiliate engaging in a § 240.13e–3 transaction must disclose to security holders of the class that is the subject of the transaction, as specified in paragraph (f) of this section, the following:

(i) The information required by Item 1 of Schedule 13E–3 (§ 240.13e–100) (Summary Term Sheet);

(ii) The information required by Items 7, 8 and 9 of Schedule 13E–3, which must be prominently disclosed in a ''Special Factors'' section in the front of the disclosure document;

(iii) A prominent legend on the outside front cover page that indicates that neither the Securities and Exchange Commission nor any state securities commission has: approved or disapproved of the transaction; passed upon the merits or fairness of the transaction; or passed upon the adequacy or accuracy of the disclosure in the document. The legend also must make it clear that any representation to the contrary is a criminal offense;

(iv) The information concerning appraisal rights required by § 229.1016(f) of this chapter; and

(v) The information required by the remaining items of Schedule 13E–3, except for § 229.1016 of this chapter (exhibits), or a fair and adequate summary of the information.

Instructions to paragraph (e)(1):

1. If the Rule 13e–3 transaction also is subject to Regulation 14A (§§ 240.14a–1 through 240.14b–2) or 14C (§§ 240.14c–1 through 240.14c–101), the registration provisions and rules of the Securities Act of 1933, Regulation 14D or § 240.13e–4, the information required by paragraph (e)(1) of this section must be combined with the proxy statement, information statement, prospectus or tender offer material sent or given to security holders.

2. If the Rule 13e–3 transaction involves a registered securities offering, the legend required by § 229.501(b)(7) of this chapter must be combined with the legend required by paragraph (e)(1)(iii) of this section.

3. The required legend must be written in clear, plain language.

(2) If there is any material change in the information previously disclosed to

security holders, the issuer or affiliate must disclose the change promptly to security holders as specified in paragraph (f)(1)(iii) of this section.

(f) *Dissemination of information to security holders.* * * *

* * * * *

§ 240.13e–4 [Amended]

23. By amending § 240.13e–4 by removing the reference:

a. ''Schedule 13E–4 [§ 240.13E–101]'' that appears in the introductory text of paragraph (a) and in its place adding ''Schedule TO (§ 240.14d–100)'';

b. ''Schedule 13E–4 [§ 240.13e–101]'' that appears in paragraph (a)(3) and in its place adding ''Schedule TO (§ 240.14d–100)'';

c. ''Schedule 13E–4 Issuer Tender Offer Statement (§ 240.13e–101),'' that appears in paragraph (f)(12) and in its place adding ''Schedule TO (§ 240.14d–100),'';

d. ''paragraph (a) of Item 9 of that Schedule'' that appears in paragraph (f)(12) and in its place adding ''Item 1016(a)(1) of Regulation M–A (§ 229.1016(a)(1) of this chapter)''; and

e. ''Schedule 13E–4'' that appears in the introductory text of paragraph (g) and in its place adding ''Schedule TO (§ 240.14d–100)''.

24. By amending § 240.13e–4 as follows:

a. By revising paragraph (a)(4);

b. Redesignating paragraph (b) as paragraph (j);

c. Adding new paragraph (b);

d. Removing the reference ''paragraphs (c), (d), (e) and (f)'' in newly redesignated paragraph (j)(2)(i) and in its place adding ''paragraphs (b), (c), (d), (e) and (f)'';

e. Removing the reference ''paragraph (b)(1)'' in newly redesignated paragraph (j)(2)(ii) and in its place adding ''paragraph (j)(1)''; and

f. revising the section heading and paragraphs (c), (d) and (e).

The additions and revisions to 240.13e–4 read as follows:

§ 240.13e–4 Tender offers by issuers.

(a) *Definitions.* * * *

(4) The term *commencement* means 12:01 a.m. on the date that the issuer or affiliate has first published, sent or given the means to tender to security holders. For purposes of this section, the means to tender includes the transmittal form or a statement regarding how the transmittal form may be obtained.

* * * * *

(b) *Filing, disclosure and dissemination.* As soon as practicable on the date of commencement of the issuer tender offer, the issuer or affiliate making the issuer tender offer must comply with:

(1) The filing requirements of paragraph (c)(2) of this section;

(2) The disclosure requirements of paragraph (d)(1) of this section; and

(3) The dissemination requirements of paragraph (e) of this section.

(c) *Material required to be filed.* The issuer or affiliate making the issuer tender offer must file with the Commission:

(1) All written communications made by the issuer or affiliate relating to the issuer tender offer, from and including the first public announcement, as soon as practicable on the date of the communication;

(2) A Schedule TO (§ 240.14d–100), including all exhibits;

(3) An amendment to Schedule TO (§ 240.14d–100) reporting promptly any material changes in the information set forth in the schedule previously filed; and

(4) A final amendment to Schedule TO (§ 240.14d–100) reporting promptly the results of the issuer tender offer.

Instructions to § 240.13e–4(c):

1. Pre-commencement communications must be filed under cover of Schedule TO (§ 240.14d–100) and the box on the cover page of the schedule must be marked.

2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under § 230.425 of this chapter and will be deemed filed under this section.

3. Each pre-commencement written communication must include a prominent legend in clear, plain language advising security holders to read the tender offer statement when it is available because it contains important information. The legend also must advise investors that they can get the tender offer statement and other filed documents for free at the Commission's web site and explain which documents are free from the issuer.

4. See §§ 230.135, 230.165 and 230.166 of this chapter for pre-commencement communications made in connection with registered exchange offers.

5. ''Public announcement'' is any oral or written communication by the issuer, affiliate or any person authorized to act on their behalf that is reasonably designed to, or has the effect of, informing the public or security holders in general about the issuer tender offer.

(d) *Disclosure of tender offer information to security holders.*

(1) The issuer or affiliate making the issuer tender offer must disclose, in a manner prescribed by paragraph (e)(1) of this section, the following:

(i) The information required by Item 1 of Schedule TO (§ 240.14d–100) (summary term sheet); and

(ii) The information required by the remaining items of Schedule TO for issuer tender offers, except for Item 12 (exhibits), or a fair and adequate summary of the information.

(2) If there are any material changes in the information previously disclosed to security holders, the issuer or affiliate must disclose the changes promptly to security holders in a manner specified in paragraph (e)(3) of this section.

(3) If the issuer or affiliate disseminates the issuer tender offer by means of summary publication as described in paragraph (e)(1)(iii) of this section, the summary advertisement must not include a transmittal letter that would permit security holders to tender securities sought in the offer and must disclose at least the following information:

(i) The identity of the issuer or affiliate making the issuer tender offer;

(ii) The information required by § 229.1004(a)(1) and § 229.1006(a) of this chapter;

(iii) Instructions on how security holders can obtain promptly a copy of the statement required by paragraph (d)(1) of this section, at the issuer or affiliate's expense; and

(iv) A statement that the information contained in the statement required by paragraph (d)(1) of this section is incorporated by reference.

(e) *Dissemination of tender offers to security holders.* An issuer tender offer will be deemed to be published, sent or given to security holders if the issuer or affiliate making the issuer tender offer complies fully with one or more of the methods described in this section.

(1) For issuer tender offers in which the consideration offered consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77c):

(i) Dissemination of cash issuer tender offers by long-form publication: By making adequate publication of the information required by paragraph (d)(1) of this section in a newspaper or newspapers, on the date of commencement of the issuer tender offer.

(ii) Dissemination of any issuer tender offer by use of stockholder and other lists:

(A) By mailing or otherwise furnishing promptly a statement containing the information required by paragraph (d)(1) of this section to each security holder whose name appears on the most recent stockholder list of the issuer;

(B) By contacting each participant on the most recent security position listing of any clearing agency within the possession or access of the issuer or affiliate making the issuer tender offer, and making inquiry of each participant

as to the approximate number of beneficial owners of the securities sought in the offer that are held by the participant;

(C) By furnishing to each participant a sufficient number of copies of the statement required by paragraph (d)(1) of this section for transmittal to the beneficial owners; and

(D) By agreeing to reimburse each participant promptly for its reasonable expenses incurred in forwarding the statement to beneficial owners.

(iii) Dissemination of certain cash issuer tender offers by summary publication:

(A) If the issuer tender offer is not subject to § 240.13e–3, by making adequate publication of a summary advertisement containing the information required by paragraph (d)(3) of this section in a newspaper or newspapers, on the date of commencement of the issuer tender offer; and

(B) By mailing or otherwise furnishing promptly the statement required by paragraph (d)(1) of this section and a transmittal letter to any security holder who requests a copy of the statement or transmittal letter.

Instruction to paragraph (e)(1): For purposes of paragraphs (e)(1)(i) and (e)(1)(iii) of this section, adequate publication of the issuer tender offer may require publication in a newspaper with a national circulation, a newspaper with metropolitan or regional circulation, or a combination of the two, depending upon the facts and circumstances involved.

(2) For tender offers in which the consideration consists solely or partially of securities registered under the Securities Act of 1933, a registration statement containing all of the required information, including pricing information, has been filed and a preliminary prospectus or a prospectus that meets the requirements of Section 10(a) of the Securities Act (15 U.S.C. (15 U.S.C. 77j(a)), including a letter of transmittal, is delivered to security holders. However, for going-private transactions (as defined by § 240.13e–3) and roll-up transactions (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)), a registration statement registering the securities to be offered must have become effective and only a prospectus that meets the requirements of Section 10(a) of the Securities Act may be delivered to security holders on the date of commencement.

Instructions to paragraph (e)(2)

1. If the prospectus is being delivered by mail, mailing on the date of commencement is sufficient.

2. A preliminary prospectus used under this section may not omit information under § 230.430 or § 230.430A of this chapter.

3. If a preliminary prospectus is used under this section and the issuer must disseminate material changes, the tender offer must remain open for the period specified in paragraph (e)(3) of this section.

4. If a preliminary prospectus is used under this section, tenders may be requested in accordance with § 230.162(a) of this chapter.

(3) If a material change occurs in the information published, sent or given to security holders, the issuer or affiliate must disseminate promptly disclosure of the change in a manner reasonably calculated to inform security holders of the change. In a registered securities offer where the issuer or affiliate disseminates the preliminary prospectus as permitted by paragraph (e)(2) of this section, the offer must remain open from the date that material changes to the tender offer materials are disseminated to security holders, as follows:

(i) Five business days for a prospectus supplement containing a material change other than price or share levels;

(ii) Ten business days for a prospectus supplement containing a change in price, the amount of securities sought, the dealer's soliciting fee, or other similarly significant change;

(iii) Ten business days for a prospectus supplement included as part of a post-effective amendment; and

(iv) Twenty business days for a revised prospectus when the initial prospectus was materially deficient.

* * * * *

25. By revising § 240.13e–100 to read as follows:

§ 240.13e–100 Schedule 13E–3, Transaction statement under section 13(e) of the Securities Exchange Act of 1934 and Rule 13e–3 (§ 240.13e–3) thereunder.

Securities and Exchange Commission, Washington, D.C. 20549

Rule 13e–3 Transaction Statement under Section 13(e) of the Securities Exchange Act of 1934 (Amendment No. __)

_____

(Name of the Issuer)

_____

(Names of Persons Filing Statement)

_____

(Title of Class of Securities)

_____

(CUSIP Number of Class of Securities)

_____

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of the Persons Filing Statement)

This statement is filed in connection with (check the appropriate box):

a. [ ] The filing of solicitation materials or an information statement subject to Regulation 14A (§§ 240.14a–1 through 240.14b–2), Regulation 14C (§§ 240.14c–1 through 240.14c–101) or Rule 13e–3(c) (§ 240.13e–3(c)) under the Securities Exchange Act of 1934 (''the Act'').

b. [ ] The filing of a registration statement under the Securities Act of 1933.

c. [ ] A tender offer.

d. [ ] None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies: [ ]

Check the following box if the filing is a final amendment reporting the results of the transaction [ ]

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check the box if any part of the fee is offset as provided by § 240.0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____

Form or Registration No.: _____

Filing Party: _____

Date Filed: _____

General Instructions:

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. This filing must be accompanied by a fee payable to the Commission as required by § 240.0–11(b).

C. If the statement is filed by a general or limited partnership, syndicate or other group, the information called for by Items 3, 5, 6, 10 and 11 must be given with respect to: (i) Each partner of the general partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the items specified above must be given with respect to: (a) Each executive officer and director of the corporation; (b) each person controlling the corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of the corporation.

D. Depending on the type of Rule 13e–3 transaction (§ 240.13e–3(a)(3)), this statement must be filed with the Commission:

1. At the same time as filing preliminary or definitive soliciting materials or an information statement under Regulations 14A or 14C of the Act;

2. At the same time as filing a registration statement under the Securities Act of 1933;

3. As soon as practicable on the date a tender offer is first published, sent or given to security holders; or

4. At least 30 days before any purchase of securities of the class of securities subject to the Rule 13e–3 transaction, if the transaction does not involve a solicitation, an information statement, the registration of securities or a tender offer, as described in paragraphs 1, 2 or 3 of this Instruction; and

5. If the Rule 13e–3 transaction involves a series of transactions, the issuer or affiliate must file this statement at the time indicated in paragraphs 1 through 4 of this Instruction for the first transaction and must amend the schedule promptly with respect to each subsequent transaction.

E. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses, except that responses to Items 7, 8 and 9 of this schedule must be provided in full. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

F. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Act.

G. If the Rule 13e–3 transaction also involves a transaction subject to Regulation 14A (§§ 240.14a–1 through 240.14b–2) or 14C (§§ 240.14c–1 through 240.14c–101) of the Act, the registration of securities under the Securities Act of 1933 and the General Rules and Regulations of that Act, or a tender offer subject to Regulation 14D (§§ 240.14d–1 through 240.14d–101) or § 240.13e–4, this statement must incorporate by reference the information contained in the proxy, information, registration or tender offer statement in answer to the items of this statement.

H. The information required by the items of this statement is intended to be in addition to any disclosure requirements of any other form or schedule that may be filed with the Commission in connection with the Rule 13e–3 transaction. If those forms or schedules require less information on any topic than this statement, the requirements of this statement control.

I. If the Rule 13e–3 transaction involves a tender offer, then a combined statement on Schedules 13E–3 and TO may be filed with the Commission under cover of Schedule TO (§ 240.14d–100). See Instruction J of Schedule TO (§ 240.14d–100).

J. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

Item 1. Summary Term Sheet

Furnish the information required by Item 1001 of Regulation M–A (§ 229.1001 of this chapter) unless information is disclosed to security holders in a prospectus that meets the requirements of § 230.421(d) of this chapter.

Item 2. Subject Company Information

Furnish the information required by Item 1002 of Regulation M–A (§ 229.1002 of this chapter).

Item 3. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) through (c) of Regulation M–A (§ 229.1003 of this chapter).

Item 4. Terms of the Transaction

Furnish the information required by Item 1004(a) and (c) through (f) of Regulation M–A (§ 229.1004 of this chapter).

Item 5. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(a) through (c) and (e) of Regulation M–A (§ 229.1005 of this chapter).

Item 6. Purposes of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(b) and (c)(1) through (8) of Regulation M–A (§ 229.1006 of this chapter).

Instruction to Item 6: In providing the information specified in Item 1006(c) for this item, discuss any activities or transactions that would occur after the Rule 13e–3 transaction.

Item 7. Purposes, Alternatives, Reasons and Effects

Furnish the information required by Item 1013 of Regulation M–A (§ 229.1013 of this chapter).

Item 8. Fairness of the Transaction

Furnish the information required by Item 1014 of Regulation M–A (§ 229.1014 of this chapter).

Item 9. Reports, Opinions, Appraisals and Negotiations

Furnish the information required by Item 1015 of Regulation M–A (§ 229.1015 of this chapter).

Item 10. Source and Amounts of Funds or Other Consideration

Furnish the information required by Item 1007 of Regulation M–A (§ 229.1007 of this chapter).

Item 11. Interest in Securities of the Subject Company

Furnish the information required by Item 1008 of Regulation M–A (§ 229.1008 of this chapter).

Item 12. The Solicitation or Recommendation

Furnish the information required by Item 1012(d) and (e) of Regulation M–A (§ 229.1012 of this chapter).

Item 13. Financial Statements

Furnish the information required by Item 1010(a) through (b) of Regulation M–A (§ 229.1010 of this chapter) for the issuer of the subject class of securities.

Instructions to Item 13:

1. The disclosure materials disseminated to security holders may contain the summarized financial information required by Item 1010(c) of Regulation M–A (§ 229.1010 of this chapter) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) of Regulation M–A must be disclosed directly or incorporated by reference in the statement. If summarized financial information is disseminated to security holders, include appropriate instructions on how more complete financial information can be obtained. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, the summarized financial information must be accompanied by a reconciliation as described in Instruction 2.

2. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter).

3. The filing person may incorporate by reference financial statements contained in any document filed with the Commission, solely for the purposes of this schedule, if: (a) The financial statements substantially meet the requirements of this Item; (b) an express statement is made that the financial statements are incorporated by reference; (c) the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and (d) if the matter incorporated by reference is not filed with this Schedule, an indication is made where the information may be inspected and copies obtained. Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given. *See* General Instruction F to this Schedule.

Item 14. Persons/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009 of Regulation M–A (§ 229.1009 of this chapter).

Item 15. Additional Information

Furnish the information required by Item 1011(b) of Regulation M–A (§ 229.1011 of this chapter).

Item 16. Exhibits

File as an exhibit to the Schedule all documents specified in Item 1016(a) through (d), (f) and (g) of Regulation M–A (§ 229.1016 of this chapter).

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

_____
(Signature)

_____
(Name and title)

_____
(Date)

Instruction to Signature: The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See § 240.12b–11 with respect to signature requirements.

§ 240.13e–101 [Removed and reserved]

26. By removing and reserving § 240.13e–101.

§ 240.14a–4 [Amended]

27. By amending § 240.14a–4, paragraph (f), by removing the words '', or mailed for filing to,''.

28. By amending § 240.14a–6 as follows:

a. By revising paragraphs (b), (c), (e)(2) and (j),

b. Removing the note following paragraph (b), and

c. Adding paragraph (o) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(b) *Definitive proxy statement and other soliciting material.* Eight definitive copies of the proxy statement, form of proxy and all other soliciting materials, in the same form as the materials sent to security holders, must be filed with the Commission no later than the date they are first sent or given to security holders. Three copies of these materials also must be filed with, or mailed for filing to, each national securities exchange on which the registrant has a class of securities listed and registered.

(c) *Personal solicitation materials.* If part or all of the solicitation involves personal solicitation, then eight copies of all written instructions or other materials that discuss, review or comment on the merits of any matter to be acted on, that are furnished to persons making the actual solicitation for their use directly or indirectly in connection with the solicitation, must be filed with the Commission no later than the date the materials are first sent or given to these persons.

* * * * *

(e)(1) * * *

(2) *Confidential treatment.* If action will be taken on any matter specified in Item 14 of Schedule 14A (§ 240.14a–101), all copies of the preliminary proxy statement and form of proxy filed under paragraph (a) of this section will be for the information of the Commission only and will not be deemed available for public inspection until filed with the Commission in definitive form so long as:

(i) The proxy statement does not relate to a matter or proposal subject to § 240.13e–3 or a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter);

(ii) Neither the parties to the transaction nor any persons authorized to act on their behalf have made any public communications relating to the transaction except for statements where the content is limited to the information specified in § 230.135 of this chapter; and

(iii) The materials are filed in paper and marked ''Confidential, For Use of the Commission Only.'' In all cases, the materials may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make any inquiries or investigation into the materials as may be necessary to conduct an adequate review by the Commission.

Instruction to paragraph (e)(2): If communications are made publicly that go beyond the information specified in § 230.135 of this chapter, the preliminary proxy materials must be re-filed promptly with the Commission as public materials.

* * * * *

(j) *Merger proxy materials.* (1) Any proxy statement, form of proxy or other soliciting material required to be filed by this section that also is either

(i) Included in a registration statement filed under the Securities Act of 1933 on Forms S–4 (§ 239.25 of this chapter), F–4 (§ 239.34 of this chapter) or N–14 (§ 239.23 of this chapter); or

(ii) Filed under § 230.424, § 230.425 or § 230.497 of this chapter is required to be filed only under the Securities Act, and is deemed filed under this section.

(2) Under paragraph (j)(1) of this section, the fee required by paragraph (i) of this section need not be paid.

* * * * *

(o) *Solicitations before furnishing a definitive proxy statement.* Solicitations that are published, sent or given to security holders before they have been furnished a definitive proxy statement must be made in accordance with § 240.14a–12 unless there is an exemption available under § 240.14a–2.

§ 240.14a–11 [Removed and reserved]

29. By removing and reserving § 240.14a–11.

30. By revising § 240.14a–12 to read as follows:

§ 240.14a–12 Solicitation before furnishing a proxy statement.

(a) Notwithstanding the provisions of § 240.14a–3(a), a solicitation may be made before furnishing security holders with a proxy statement meeting the requirements of § 240.14a–3(a) if:

(1) Each written communication includes:

(i) The identity of the participants in the solicitation (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) and a description of their direct or indirect interests, by security holdings or otherwise, or a prominent legend in clear, plain language advising security holders where they can obtain that information; and

(ii) A prominent legend in clear, plain language advising security holders to read the proxy statement when it is available because it contains important information. The legend also must explain to investors that they can get the proxy statement, and any other relevant documents, for free at the Commission's web site and describe which documents are available free from the participants; and

(2) A definitive proxy statement meeting the requirements of § 240.14a–3(a) is sent or given to security holders solicited in reliance on this section before or at the same time as the forms of proxy, consent or authorization are furnished to or requested from security holders.

(b) Any soliciting material published, sent or given to security holders in accordance with paragraph (a) of this section must be filed with the Commission no later than the date the material is first published, sent or given to security holders. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. The soliciting material must include a cover page in the form set forth in Schedule 14A (§ 240.14a–101) and the appropriate box on the cover page must be marked. Soliciting material in connection with a registered offering is required to be filed only under § 230.424 or § 230.425 of this chapter, and will be deemed filed under this section.

(c) Solicitations by any person or group of persons for the purpose of opposing a solicitation subject to this regulation by any other person or group of persons with respect to the election or removal of directors at any annual or

special meeting of security holders also are subject to the following provisions:

(1) *Application of this rule to annual report.* Notwithstanding the provisions of § 240.14a–3 (b) and (c), any portion of the annual report referred to in § 240.14a–3(b) that comments upon or refers to any solicitation subject to this rule, or to any participant in the solicitation, other than the solicitation by the management, must be filed with the Commission as proxy material subject to this regulation. This must be filed in electronic format unless an exemption is available under Rules 201 or 202 of Regulation S–T (§ 232.201 or § 232.202 of this chapter).

(2) *Use of reprints or reproductions.* In any solicitation subject to this § 240.14a–12(c), soliciting material that includes, in whole or part, any reprints or reproductions of any previously published material must:

(i) State the name of the author and publication, the date of prior publication, and identify any person who is quoted without being named in the previously published material.

(ii) Except in the case of a public or official document or statement, state whether or not the consent of the author and publication has been obtained to the use of the previously published material as proxy soliciting material.

(iii) If any participant using the previously published material, or anyone on his or her behalf, paid, directly or indirectly, for the preparation or prior publication of the previously published material, or has made or proposes to make any payments or give any other consideration in connection with the publication or republication of the material, state the circumstances.

Instructions to § 240.14a–12

1. If paper filing is permitted, file eight copies of the soliciting material with the Commission, except that only three copies of the material specified by § 240.14a–12(c)(1) need be filed.

2. Any communications made under this section after the definitive proxy statement is on file but before it is disseminated also must specify that the proxy statement is publicly available and the anticipated date of dissemination.

31. By amending § 240.14a–101 by removing the reference:

a. ''Soliciting Material Pursuant to § 240.14a–11(c) or § 240.14a–12'' on the cover page and in its place adding ''Soliciting Material under § 240.14a–12'';

b. ''Item 14(b)'' in paragraph (3) of Note D and in its place adding ''Item 14(e)(1)'';

c. ''In Items 13 and 14'' in the introductory text of Note E and in its place adding ''In Item 13'';

d. ''or to an 'other person' specified in Item 14(a) of this Schedule'' each time it appears in the introductory text of Note E; and

e. ''or other person'' each time it appears in Note E.

32. By amending § 240.14a–101 by removing the reference:

a. ''Rule 14a–11 (§ 240.14a–11 of this chapter.)'' in the introductory text of paragraph (a) of Item 4 and in its place adding ''Rule 14a–12(c) (§ 240.14a–12(c)).'';

b. ''Rule 14a–11 (§ 240.14a–11 of this chapter).'' in the introductory text of paragraph (b) of Item 4 and in its place adding ''Rule 14a–12(c) (§ 240.14a–12(c)).'';

c. ''Rule 14a–11 (§ 240.14a–11 of this chapter),'' in Instruction 1 to Item 4 and in its place adding ''Rule 14a–12(c) (§ 240.14a–12(c)),''; and

d. ''Rule 14a–11 (§ 240.14a–11 of this chapter).'' in the introductory text of paragraphs (a) and (b) of Item 5 and in its place adding ''Rule 14a–12(c) (§ 240.14a–12(c)).'' each time it appears.

33. By amending § 240.14a–101 by revising paragraphs (2) and (3) in Note G and Item 14 to read as follows:

* * * * *

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

G. *Special Note for Small Business Issuers*

(1) * * *

(2) Registrants and acquirees that relied upon Alternative 1 in their most recent Form 10–KSB may provide the following information (Question numbers are in reference to Model A of Form 1–A): (a) Questions 37 and 38 instead of Item 6(d); (b) Question 43 instead of Item 7(a); (c) Questions 29–36 and 39 instead of Item 7(b); (d) Questions 40–42 instead of Item 8; (e) Questions 40–42 instead of Item 10; (f) the information required in Part F/S of Form 10–SB instead of the financial statement requirements of Items 13 or 14; (g) Questions 4, 11, and 47–50 instead of Item 13(a)(1)(3); (h) Question 3 instead of the information specified in Items 101 and 102 of Regulation S–B (§ 228.101 and § 228.102 of this chapter); and (i) Questions 4, 11, and 47–50 instead of the information specified in Item 303 of Regulation S–B(§ 228.303 of this chapter).

(3) Registrants and acquirees that relied upon Alternative 2 in their most recent Form 10–KSB may provide the following information (''Model B'' refers to Model B of Form 1–A): (a) Item 10 of Model B instead of Item 6(d) of Schedule 14A; (b) Item 8(d) of Model B instead of Item 7(a) of Schedule 14A; (c) Items 8(a)(8(c) and Item 11 of Model B instead of Item 7(b) of Schedule 14A; (d) Item 9 of Model B instead of Item 8 of Schedule 14A; (e) Item 9 of Model B instead of Item 10 of Schedule 14A; (f) the information required in Part F/S of Form 10–SB instead of the financial statements requirements of Items 13 or 14 of Schedule 14A; (g) Item 6(a)(3)(i) of Model B instead of Item 13(a)(1)(3) of Schedule 14A; (h) Items 6 and 7 of Model B instead of the information specified in Items 101 and 102 of Regulation S–B (§ 228.101 and § 228.102 of this chapter); and (i) Item 6(a)(3)(i) of Model B instead of the information specified in Item 303 of Regulation S–B (§ 228.303 of this chapter).

* * * * *

Item 14. Mergers, consolidations, acquisitions and similar matters. (See Notes A and D at the beginning of this Schedule.)

Instructions to Item 14.

1. In transactions in which the consideration offered to security holders consists wholly or in part of securities registered under the Securities Act of 1933, furnish the information required by Form S–4 (§ 239.25 of this chapter), Form F–4 (§ 239.34 of this chapter), or Form N–14 (§ 239.23 of this chapter), as applicable, instead of this Item. Only a Form S–4, Form F–4, or Form N–14 must be filed in accordance with § 240.14a–6(j).

2. (a) In transactions in which the consideration offered to security holders consists wholly of cash, the information required by paragraph (c)(1) of this Item for the acquiring company need not be provided unless the information is material to an informed voting decision (*e.g.*, the security holders of the target company are voting and financing is not assured).

(b) Additionally, if only the security holders of the target company are voting:

i. The financial information in paragraphs (b)(8)—(11) of this Item for the acquiring company and the target need not be provided; and

ii. The information in paragraph (c)(2) of this Item for the target company need not be provided.

If, however, the transaction is a going-private transaction (as defined by § 240.13e–3), then the information required by paragraph (c)(2) of this Item must be provided and to the extent that the going-private rules require the information specified in paragraph (b)(8)—(b)(11) of this Item, that information must be provided as well.

3. In transactions in which the consideration offered to security holders consists wholly of securities exempt from registration under the Securities Act of 1933 or a combination of exempt securities and cash, information about the acquiring company required by paragraph (c)(1) of this Item need not be provided if only the security holders of the acquiring company are voting, unless the information is material to an informed voting decision. If only the security holders of the target company are voting, information about the target company in paragraph (c)(2) of this Item need not be provided. However, the information required by paragraph (c)(2) of this Item must be provided if the transaction is a going-private (as defined by § 240.13e–3) or roll-up (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)) transaction.

4. The information required by paragraphs (b)(8)—(11) and (c) need not be provided if

the plan being voted on involves only the acquiring company and one or more of its totally held subsidiaries and does not involve a liquidation or a spin-off.

5. To facilitate compliance with Rule 2–02(a) of Regulation S–X (§ 210.2–02(a) of this chapter) (technical requirements relating to accountants' reports), one copy of the definitive proxy statement filed with the Commission must include a signed copy of the accountant's report. If the financial statements are incorporated by reference, a signed copy of the accountant's report must be filed with the definitive proxy statement. Signatures may be typed if the document is filed electronically on EDGAR. See Rule 302 of Regulation S–T (§ 232.302 of this chapter).

6. Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with § 210.12–15, § 210.12–28 and § 210.12–29 of this chapter (or, for management investment companies, §§ 210.12–12 through 210.12–14 of this chapter) of that regulation need be furnished in the proxy statement.

7. If the preliminary proxy material incorporates by reference financial statements required by this Item, a draft of the financial statements must be furnished to the Commission staff upon request if the document from which they are incorporated has not been filed with or furnished to the Commission.

(a) *Applicability.* If action is to be taken with respect to any of the following transactions, provide the information required by this Item:

(1) A merger or consolidation;

(2) An acquisition of securities of another person;

(3) An acquisition of any other going business or the assets of a going business;

(4) A sale or other transfer of all or any substantial part of assets; or

(5) A liquidation or dissolution.

(b) *Transaction information.* Provide the following information for each of the parties to the transaction unless otherwise specified:

(1) *Summary term sheet.* The information required by Item 1001 of Regulation M–A (§ 229.1001 of this chapter).

(2) *Contact information.* The name, complete mailing address and telephone number of the principal executive offices.

(3) *Business conducted.* A brief description of the general nature of the business conducted.

(4) *Terms of the transaction.* The information required by Item 1004(a)(2) of Regulation M–A (§ 229.1004 of this chapter).

(5) *Regulatory approvals.* A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction and, if so, the status of the compliance or approval.

(6) *Reports, opinions, appraisals.* If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and is referred to in the proxy statement, furnish the information required by Item 1015(b) of Regulation M–A (§ 229.1015 of this chapter).

(7) *Past contacts, transactions or negotiations.* The information required by Items 1005(b) and 1011(a)(1) of Regulation M–A (§ 229.1005 of this chapter and § 229.1011 of this chapter), for the parties to the transaction and their affiliates during the periods for which financial statements are presented or incorporated by reference under this Item.

(8) *Selected financial data.* The selected financial data required by Item 301 of Regulation S–K (§ 229.301 of this chapter).

(9) *Pro forma selected financial data.* If material, the information required by Item 301 of Regulation S–K (§ 229.301 of this chapter) for the acquiring company, showing the pro forma effect of the transaction.

(10) *Pro forma information.* In a table designed to facilitate comparison, historical and pro forma per share data of the acquiring company and historical and equivalent pro forma per share data of the target company for the following Items:

(i) Book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter);

(ii) Cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter); and

(iii) Income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter).

Instructions to paragraphs (b)(8), (b)(9) and (b)(10):

1. For a business combination accounted for as a purchase, present the financial information required by paragraphs (b)(9) and (b)(10) only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, present the financial information required by paragraphs (b)(9) and (b)(10) (except for information with regard to book value) for the most recent three fiscal years and interim period. For purposes of these paragraphs, book value information need only be provided for the most recent balance sheet date.

2. Calculate the equivalent pro forma per share amounts for one share of the company being acquired by multiplying the exchange ratio times each of:

(i) The pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction;

(ii) The pro forma book value per share; and

(iii) The pro forma dividends per share of the acquiring company.

3. Unless registered on a national securities exchange or otherwise required to furnish such information, registered investment companies need not furnish the information required by paragraphs (b)(8) and (b)(9) of this Item.

(11) *Financial information.* If material, financial information required by Article 11 of Regulation S–X (§§ 210.10–01 through 229.11–03 of this chapter) with respect to this transaction.

Instructions to paragraph (b)(11):

1. Present any Article 11 information required with respect to transactions other than those being voted upon (where not incorporated by reference) together with the pro forma information relating to the transaction being voted upon. In presenting this information, you must clearly distinguish between the transaction being voted upon and any other transaction.

2. If current pro forma financial information with respect to all other transactions is incorporated by reference, you need only present the pro forma effect of this transaction.

(c) *Information about the parties to the transaction.*

(1) *Acquiring company.* Furnish the information required by Part B (Registrant Information) of Form S–4 (§ 239.25 of this chapter) or Form F–4 (§ 239.34 of this chapter), as applicable, for the acquiring company. However, financial statements need only be presented for the latest two fiscal years and interim periods.

(2) *Acquired company.* Furnish the information required by Part C (Information with Respect to the Company Being Acquired) of Form S–4 (§ 239.25 of this chapter) or Form F–4 (§ 239.34 of this chapter), as applicable.

(d) *Information about parties to the transaction: registered investment companies and business development companies.* If the acquiring company or the acquired company is an investment company registered under the Investment Company Act of 1940 or a business development company as defined by Section 2(a)(48) of the Investment Company Act of 1940, provide the following information for that company instead of the information specified by paragraph (c) of this Item:

(1) Information required by Item 101 of Regulation S–K (§ 229.101 of this chapter), description of business;

(2) Information required by Item 102 of Regulation S–K (§ 229.102 of this chapter), description of property;

(3) Information required by Item 103 of Regulation S–K (§ 229.103 of this chapter), legal proceedings;

(4) Information required by Item 201 of Regulation S–K (§ 229.201 of this chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

(5) Financial statements meeting the requirements of Regulation S–X, including financial information required by Rule 3–05 and Article 11 of Regulation S–X (§ 210.3–05 and § 210.11–01 through § 210.11–03 of this chapter) with respect to transactions other than that as to which action is to be taken as described in this proxy statement;

(6) Information required by Item 301 of Regulation S–K (§ 229.301 of this chapter), selected financial data;

(7) Information required by Item 302 of Regulation S–K (§ 229.302 of this chapter), supplementary financial information;

(8) Information required by Item 303 of Regulation S–K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations; and

(9) Information required by Item 304 of Regulation S–K (§ 229.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure.

Instruction to paragraph (d) of Item 14: Unless registered on a national securities exchange or otherwise required to furnish such information, registered investment companies need not furnish the information required by paragraphs (d)(6), (d)(7) and (d)(8) of this Item.

(e) *Incorporation by reference.*

(1) The information required by paragraph (c) of this section may be incorporated by reference into the proxy statement to the same extent as would be permitted by Form S–4 (§ 239.25 of this chapter) or Form F–4 (§ 239.34 of this chapter), as applicable.

(2) Alternatively, the registrant may incorporate by reference into the proxy statement the information required by paragraph (c) of this Item if it is contained in an annual report sent to security holders in accordance with § 240.14a–3 of this chapter with respect to the same meeting or solicitation of consents or authorizations that the proxy statement relates to and the information substantially meets the disclosure requirements of Item 14 or Item 17 of Form S–4 (§ 239.25 of this chapter) or Form F–4 (§ 239.34 of this chapter), as applicable.

* * * * *

34. By amending § 240.14c–5 by revising paragraphs (b) and (d)(2), and removing the note following paragraph (b) to read as follows:

§ 240.14c–5 Filing requirements.

* * * * *

(b) *Definitive information statement.* Eight definitive copies of the information statement, in the form in which it is furnished to security holders, must be filed with the Commission no later than the date the information statement is first sent or given to security holders. Three copies of these materials also must be filed with, or mailed for filing to, each national securities exchange on which the registrant has a class of securities listed and registered.

* * * * *

(d)(1) * * *

(2) *Confidential treatment.* If action will be taken on any matter specified in Item 14 of Schedule 14A (§ 240.14a–101), all copies of the preliminary information statement filed under paragraph (a) of this section will be for the information of the Commission only and will not be deemed available for public inspection until filed with the Commission in definitive form so long as:

(i) The information statement does not relate to a matter or proposal subject to § 240.13e–3 or a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter);

(ii) Neither the parties to the transaction nor any persons authorized to act on their behalf have made any public communications relating to the transaction except for statements where the content is limited to the information specified in § 230.135 of this chapter; and

(iii) The materials are filed in paper and marked ''Confidential, For Use of the Commission Only.'' In all cases, the materials may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make any inquiries or investigation into the materials as may be necessary to conduct an adequate review by the Commission.

Instruction to paragraph (d)(2): If communications are made publicly that go beyond the information specified in § 230.135, the materials must be re-filed publicly with the Commission.

* * * * *

35. By amending § 240.14d–1 as follows:

a. By removing the reference ''Schedules 14D–1'' in the introductory text of paragraph (b) and adding in its place ''Schedules TO'';

b. Redesignating paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), (g)(6) and (g)(7) as paragraphs (g)(2), (g)(7), (g)(5), (g)(1), (g)(9), (g)(3) and (g)(6), respectively;

c. In newly redesignated paragraph (g)(1) removing the reference ''Rule 14d–3, Rule 14d–9(d) and Item 6 of Schedule 14D–1'' and in its place adding ''Rule 14d–3 and Rule 14d–9(d)''; and

d. Adding new paragraphs (g)(4) and (g)(8) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(g) *Definitions.* * * *

(4) The term *initial offering period* means the period from the time the offer commences until all minimum time periods, including extensions, required by Regulations 14D (§§ 240.14d–1 through 240.14d–103) and 14E (§§ 240.14e–1 through 240.14e–8) have been satisfied and all conditions to the offer have been satisfied or waived within these time periods.

* * * * *

(8) The term *subsequent offering period* means the period immediately following the initial offering period meeting the conditions specified in § 240.14d–11.

* * * * *

36. By revising § 240.14d–2 to read as follows:

§ 240.14d–2 Commencement of a tender offer.

(a) *Date of commencement.* A bidder will have commenced its tender offer for purposes of section 14(d) of the Act (15 U.S.C. 78n) and the rules under that section at 12:01 a.m. on the date when the bidder has first published, sent or given the means to tender to security holders. For purposes of this section, the means to tender includes the transmittal form or a statement regarding how the transmittal form may be obtained.

(b) *Pre-commencement communications.* A communication by the bidder will not be deemed to constitute commencement of a tender offer if:

(1) It does not include the means for security holders to tender their shares into the offer; and

(2) All written communications relating to the tender offer, from and including the first public announcement, are filed under cover of Schedule TO (§ 240.14d–100) with the Commission no later than the date of the communication. The bidder also must deliver to the subject company and any other bidder for the same class of securities the first communication relating to the transaction that is filed, or required to be filed, with the Commission.

Instructions to paragraph (b)(2)

1. The box on the front of Schedule TO indicating that the filing contains pre-commencement communications must be checked.

2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under § 230.425 of this chapter and will be deemed filed under this section.

3. Each pre-commencement written communication must include a prominent legend in clear, plain language advising security holders to read the tender offer statement when it is available because it contains important information. The legend also must advise investors that they can get the tender offer statement and other filed documents for free at the Commission's web site and explain which documents are free from the offeror.

4. See §§ 230.135, 230.165 and 230.166 of this chapter for pre-commencement communications made in connection with registered exchange offers.

5. ''Public announcement'' is any oral or written communication by the bidder, or any person authorized to act on the bidder's behalf, that is reasonably designed to, or has the effect of, informing the public or security holders in general about the tender offer.

(c) *Filing and other obligations triggered by commencement.* As soon as practicable on the date of commencement, a bidder must comply with the filing requirements of § 240.14d–3(a), the dissemination requirements of § 240.14d–4(a) or (b), and the disclosure requirements of § 240.14d–6(a).

37. By amending § 240.14d–3 as follows:

a. By removing the reference ''Schedule 14D–1'' in paragraphs (a)(1), (a)(2), (a)(2)(ii), the introductory text of (a)(3), and paragraph (c) each time it appears and adding in its place ''Schedule TO'';

b. Removing the phrase ''ten copies of'' in paragraphs (a)(1);

c. Removing the phrase ''Hand delivers'' in paragraph (a)(2), and adding in its place ''Delivers'', and

d. Revising paragraph (b) to read as follows:

§ 240.14d–3 Filing and transmission of tender offer statement.

* * * * *

(b) *Post-commencement amendments and additional materials.* The bidder making the tender offer must file with the Commission:

(1) An amendment to Schedule TO (§ 240.14d–100) reporting promptly any material changes in the information set forth in the schedule previously filed and including copies of any additional tender offer materials as exhibits; and

(2) A final amendment to Schedule TO (§ 240.14d–100) reporting promptly the results of the tender offer.

Instruction to paragraph (b): A copy of any additional tender offer materials or amendment filed under this section must be sent promptly to the subject company and to any exchange and/or NASD, as required by paragraph (a) of this section, but in no event later than the date the materials are first published, sent or given to security holders.

* * * * *

38. Amend § 240.14d–4 as follows:

a. By revising the section heading;

b. Adding an introductory text to § 240.14d–4;

c. Revising the introductory text of paragraph (a) and paragraph (a)(3);

d. Adding an Instruction to paragraph (a);

e. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d)(1) and adding a new paragraph (b);

f. Revising the heading of newly redesignated paragraph (d);

g. In the first sentence of newly redesignated paragraph (d)(1) removing the phrase ''paragraph (a) of''; and

h. Adding paragraph (d)(2) to read as follows:

§ 240.14d–4 Dissemination of tender offers to security holders.

As soon as practicable on the date of commencement of a tender offer, the bidder must publish, send or give the disclosure required by § 240.14d–6 to security holders of the class of securities that is the subject of the offer, by complying with all of the requirements of any of the following:

(a) *Cash tender offers and exempt securities offers.* For tender offers in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77c):

* * * * *

(3) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings under § 240.14d–5 must comply with paragraph (a)(1) or (2) of this section on or before the date of the bidder's request under § 240.14d–5(a).

Instruction to paragraph (a): Tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication and the use of stockholder lists and security position listings under § 240.14d–5, paragraphs (a)(2) and (a)(3) of this section are exclusive.

(b) *Registered securities offers.* For tender offers in which the consideration consists solely or partially of securities registered under the Securities Act of 1933, a registration statement containing all of the required information, including pricing information, has been filed and a preliminary prospectus or a prospectus that meets the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)), including a letter of transmittal, is delivered to security holders. However, for going-private transactions (as defined by § 240.13e–3) and roll-up transactions (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)), a registration statement registering the securities to be offered must have become effective and only a prospectus that meets the requirements of section 10(a) of the Securities Act may be delivered to security holders on the date of commencement.

Instructions to paragraph (b)

1. If the prospectus is being delivered by mail, mailing on the date of commencement is sufficient.

2. A preliminary prospectus used under this section may not omit information under § 230.430 or § 230.430A of this chapter.

3. If a preliminary prospectus is used under this section and the bidder must disseminate material changes, the tender offer must remain open for the period specified in paragraph (d)(2) of this section.

4. If a preliminary prospectus is used under this section, tenders may be requested in accordance with § 230.162(a) of this chapter.

* * * * *

(d) *Publication of changes and extension of the offer.* (1) * * *

(2) In a registered securities offer where the bidder disseminates the preliminary prospectus as permitted by paragraph (b) of this section, the offer must remain open from the date that material changes to the tender offer materials are disseminated to security holders, as follows:

(i) Five business days for a prospectus supplement containing a material change other than price or share levels;

(ii) Ten business days for a prospectus supplement containing a change in price, the amount of securities sought, the dealer's soliciting fee, or other similarly significant change;

(iii) Ten business days for a prospectus supplement included as part of a post-effective amendment; and

(iv) Twenty business days for a revised prospectus when the initial prospectus was materially deficient.

39. By amending § 240.14d–5 by revising paragraph (c)(1) to read as follows:

§ 240.14d–5 Dissemination of certain tender offers by the use of stockholder lists and security position listings.

* * * * *

(c) * * *

(1) No later than the third business day after the date of the bidder's request, the subject company must furnish to the bidder at the subject company's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in paragraph (a)(2) of this section; the names and addresses of participants identified on the most recent security position listing of any clearing agency that is within the access of the subject company; and the most recent list of names, addresses and security positions of beneficial owners as specified in § 240.14a–13(b), in the possession of the subject company, or that subsequently comes into its possession. All security holder list information must be in the format requested by the bidder to the extent the format is available to the subject company without undue burden or expense.

* * * * *

40. By revising § 240.14d–6 to read as follows:

§ 240.14d–6 Disclosure of tender offer information to security holders.

(a) *Information required on date of commencement.*—(1) *Long-form publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of long-form publication under § 240.14d–4(a)(1), the long-form publication must include the information required by paragraph (d)(1) of this section.

(2) *Summary publication.* If a tender offer is published, sent or given to security holders on the date of

commencement by means of summary publication under § 240.14d–4(a)(2):

(i) The summary advertisement must contain at least the information required by paragraph (d)(2) of this section; and

(ii) The tender offer materials furnished by the bidder upon request of any security holder must include the information required by paragraph (d)(1) of this section.

(3) *Use of stockholder lists and security position listings.* If a tender offer is published, sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings under § 240.14d–4(a)(3):

(i) The summary advertisement must contain at least the information required by paragraph (d)(2) of this section; and

(ii) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder must include the information required by paragraph (d)(1) of this section.

(4) *Other tender offers.* If a tender offer is published or sent or given to security holders other than pursuant to § 240.14d–4(a), the tender offer materials that are published or sent or given to security holders on the date of commencement of such offer must include the information required by paragraph (d)(1) of this section.

(b) *Information required in other tender offer materials published after commencement.* Except for tender offer materials described in paragraphs (a)(2)(ii) and (a)(3)(ii) of this section, additional tender offer materials published, sent or given to security holders after commencement must include:

(1) The identities of the bidder and subject company;

(2) The amount and class of securities being sought;

(3) The type and amount of consideration being offered; and

(4) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer.

Instruction to paragraph (b): If the additional tender offer materials are summary advertisements, they also must include the information required by paragraphs (d)(2)(v) of this section.

(c) *Material changes.* A material change in the information published or sent or given to security holders must be promptly disclosed to security holders in additional tender offer materials.

(d) *Information to be included.*—(1) *Tender offer materials other than summary publication.* The following information is required by paragraphs (a)(1), (a)(2)(ii), (a)(3)(ii) and (a)(4) of this section:

(i) The information required by Item 1 of Schedule TO (§ 240.14d–100) (Summary Term Sheet); and

(ii) The information required by the remaining items of Schedule TO (§ 240.14d–100) for third-party tender offers, except for Item 12 (exhibits) of Schedule TO (§ 240.14d–100), or a fair and adequate summary of the information.

(2) *Summary Publication.* The following information is required in a summary advertisement under paragraphs (a)(2)(i) and (a)(3)(i) of this section:

(i) The identity of the bidder and the subject company;

(ii) The information required by Item 1004(a)(1) of Regulation M–A (§ 229.1004(a)(1) of this chapter);

(iii) If the tender offer is for less than all of the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject company;

(iv) A statement that the information required by paragraph (d)(1) of this section is incorporated by reference into the summary advertisement;

(v) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(vi) In a tender offer published or sent or given to security holders by use of stockholder lists and security position listings under § 240.14d–4(a)(3), a statement that a request is being made for such lists and listings. The summary publication also must state that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of security holders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities. If the list furnished to the bidder also included beneficial owners pursuant to § 240.14d–5(c)(1) and tender offer materials will be mailed directly to beneficial holders, include a statement to that effect.

(3) *No transmittal letter.* Neither the initial summary advertisement nor any subsequent summary advertisement may include a transmittal letter (the letter furnished to security holders for transmission of securities sought in the tender offer) or any amendment to the transmittal letter.

41. By amending § 240.14d–7 by redesignating paragraph (a) as (a)(1) and adding paragraph (a)(2) to read as follows:

§ 240.14d–7 Additional withdrawal rights.

(a) * * *

(2) *Exemption during subsequent offering period.* Notwithstanding the provisions of section 14(d)(5) of the Act (15 U.S.C. 78n(d)(5)) and paragraph (a) of this section, the bidder need not offer withdrawal rights during a subsequent offering period.

* * * * *

42. By amending § 240.14d–9 as follows:

a. By revising the section heading;

b. Redesignating paragraphs (a) through (f) as paragraphs (b) through (g);

c. Adding new paragraph (a); and

d. Revising the introductory text of newly redesignated paragraph (b) to read as follows:

§ 240.14d–9 Recommendation or solicitation by the subject company and others.

(a) *Pre-commencement communications.* A communication by a person described in paragraph (e) of this section with respect to a tender offer will not be deemed to constitute a recommendation or solicitation under this section if:

(1) The tender offer has not commenced under § 240.14d–2; and

(2) The communication is filed under cover of Schedule 14D–9 (§ 240.14d–101) with the Commission no later than the date of the communication.

Instructions to paragraph (a)(2):

1. The box on the front of Schedule 14D–9 (§ 240.14d–101) indicating that the filing contains pre-commencement communications must be checked.

2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under § 230.425 of this chapter and will be deemed filed under this section.

3. Each pre-commencement written communication must include a prominent legend in clear, plain language advising security holders to read the company's solicitation/recommendation statement when it is available because it contains important information. The legend also must advise investors that they can get the recommendation and other filed documents for free at the Commission's web site and explain which documents are free from the filer.

4. See §§ 230.135, 230.165 and 230.166 of this chapter for pre-commencement communications made in connection with registered exchange offers.

(b) *Post-commencement communications.* After commencement by a bidder under § 240.14d–2, no solicitation or recommendation to

security holders may be made by any person described in paragraph (e) of this section with respect to a tender offer for such securities unless as soon as practicable on the date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following:

(1) * * *

* * * * *

43. By amending § 240.14d–9 by removing the reference:

a. ''eight copies of'' in newly redesignated paragraph (b)(1);

b. ''14D–1'' in newly redesignated paragraphs (b)(2)(i) and (b)(3)(i) and in its place adding ''TO'';

c. ''Items 2 and 4(a) of Schedule 14D–9'' in newly redesignated paragraph (b)(2)(ii) and in its place adding ''Items 1003(d) and 1012(a) of Regulation M–A (§ 229.1003(d) and § 229.1012(a))'';

d. ''paragraph (a)(2) or (3)'' in newly redesignated paragraph (c)(2) and in its place adding ''paragraph (b)(2) or (3)'';

e. ''Items 1, 2, 3(b), 4, 6, 7 and 8'' in newly redesignated paragraph (d) and in its place adding ''Items 1 through 8'';

f. ''paragraphs (d)(2) and (e)'' in the introductory text of newly redesignated paragraph (e)(1) and in its place adding ''paragraphs (e)(2) and (f)'';

g. ''paragraph (d)(1)'' each time it appears in newly redesignated paragraph (e)(2) and in its place adding ''paragraph (e)(1)'';

h. ''14D–1 (§ 240.14d–101)'' in newly redesignated paragraph (e)(2)(i) and in its place adding ''TO (§ 240.14d–100)''; and

i. ''paragraph (e)(3)'' in newly redesignated paragraph (f)(4) and in its place adding ''paragraph (f)(3)''.

44. By adding § 240.14d–11 to read as follows:

§ 240.14d–11 Subsequent offering period.

A bidder may elect to provide a subsequent offering period of three business days to 20 business days during which tenders will be accepted if:

(a) The initial offering period of at least 20 business days has expired;

(b) The offer is for all outstanding securities of the class that is the subject of the tender offer, and if the bidder is offering security holders a choice of different forms of consideration, there is no ceiling on any form of consideration offered;

(c) The bidder immediately accepts and promptly pays for all securities tendered during the initial offering period;

(d) The bidder announces the results of the tender offer, including the approximate number and percentage of securities deposited to date, no later than 9:00 a.m. Eastern time on the next business day after the expiration date of the initial offering period and immediately begins the subsequent offering period;

(e) The bidder immediately accepts and promptly pays for all securities as they are tendered during the subsequent offering period; and

(f) The bidder offers the same form and amount of consideration to security holders in both the initial and the subsequent offering period.

Note § 240.14d–11: No withdrawal rights apply during the subsequent offering period in accordance with § 240.14d–7(a)(2).

45. By revising § 240.14d–100 to read as follows:

§ 240.14d–100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

Securities and Exchange Commission,
Washington, D.C. 20549

Schedule TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934

(Amendment No. _____)*

_____

(Name of Subject Company (issuer))

_____

(Names of Filing Persons (identifying status as offeror, issuer or other person))

_____

(Title of Class of Securities)

_____

(CUSIP Number of Class of Securities)

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check the box if any part of the fee is offset as provided by Rule 0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

[ ] Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

[ ] third-party tender offer subject to Rule 14d–1.

[ ] issuer tender offer subject to Rule 13e–4.

[ ] going-private transaction subject to Rule 13e–3.

[ ] amendment to Schedule 13D under Rule 13d–2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: [ ]

General Instructions:

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. This filing must be accompanied by a fee payable to the Commission as required by § 240.0–11.

C. If the statement is filed by a general or limited partnership, syndicate or other group, the information called for by Items 3 and 5–8 for a third-party tender offer and Items 5–8 for an issuer tender offer must be given with respect to: (i) Each partner of the general partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the items specified above must be given with respect to: (a) Each executive officer and director of the corporation; (b) each person controlling the corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of the corporation.

D. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature or filing fee is required. The filer need not respond to the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.

E. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

F. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which

it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Act.

G. A filing person may amend its previously filed Schedule 13D (§ 240.13d–101) on Schedule TO (§ 240.14d–100) if the appropriate box on the cover page is checked to indicate a combined filing and the information called for by the fourteen disclosure items on the cover page of Schedule 13D (§ 240.13d–101) is provided on the cover page of the combined filing with respect to each filing person.

H. The final amendment required by § 240.14d–3(b)(2) and § 240.13e–4(c)(4) will satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the offeror in the tender offer.

I. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

J. If the tender offer disclosed on this statement involves a going-private transaction, a combined Schedule TO (§ 240.14d–100) and Schedule 13E–3 (§ 240.13e–100) may be filed with the Commission under cover of Schedule TO. The Rule 13e–3 box on the cover page of the Schedule TO must be checked to indicate a combined filing. All information called for by both schedules must be provided except that Items 1—3, 5, 8 and 9 of Schedule TO may be omitted to the extent those items call for information that duplicates the item requirements in Schedule 13E–3.

K. For purposes of this statement, the following definitions apply:

(1) The term *offeror* means any person who makes a tender offer or on whose behalf a tender offer is made;

(2) The term *issuer tender offer* has the same meaning as in Rule 13e–4(a)(2); and

(3) The term third-party tender offer means a tender offer that is not an issuer tender offer.

Special Instructions for Complying With Schedule to

Under Sections 13(e), 14(d) and 23 of the Act and the rules and regulations of the Act, the Commission is authorized to solicit the information required to be supplied by this schedule.

Disclosure of the information specified in this schedule is mandatory, except for I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of disclosing tender offer and going-private transactions. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing tender offer and going-private statements.

Failure to disclose the information required by this schedule, except for I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules.

Item 1. Summary Term Sheet

Furnish the information required by Item 1001 of Regulation M-A (§ 229.1001 of this chapter) unless information is disclosed to security holders in a prospectus that meets the requirements of § 230.421(d) of this chapter.

Item 2. Subject Company Information

Furnish the information required by Item 1002(a) through (c) of Regulation M-A (§ 229.1002 of this chapter).

Item 3. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) through (c) of Regulation M-A (§ 229.1003 of this chapter) for a third-party tender offer and the information required by Item 1003(a) of Regulation M-A (§ 229.1003 of this chapter) for an issuer tender offer.

Item 4. Terms of the Transaction

Furnish the information required by Item 1004(a) of Regulation M-A (§ 229.1004 of this chapter) for a third-party tender offer and the information required by Item 1004(a) through (b) of Regulation M-A (§ 229.1004 of this chapter) for an issuer tender offer.

Item 5. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(a) and (b) of Regulation M-A (§ 229.1005 of this chapter) for a third-party tender offer and the information required by Item 1005(e) of Regulation M-A (§ 229.1005) for an issuer tender offer.

Item 6. Purposes of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(a) and (c)(1) through (7) of Regulation M-A (§ 229.1006 of this chapter) for a third-party tender offer and the information required by Item 1006(a) through (c) of Regulation M-A (§ 229.1006 of this chapter) for an issuer tender offer.

Item 7. Source and Amount of Funds or Other Consideration

Furnish the information required by Item 1007(a), (b) and (d) of Regulation M-A (§ 229.1007 of this chapter).

Item 8. Interest in Securities of the Subject Company

Furnish the information required by Item 1008 of Regulation M-A (§ 229.1008 of this chapter).

Item 9. Persons/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009(a) of Regulation M-A (§ 229.1009 of this chapter).

Item 10. Financial Statements

If material, furnish the information required by Item 1010(a) and (b) of Regulation M-A (§ 229.1010 of this chapter) for the issuer in an issuer tender offer and for the offeror in a third-party tender offer.

Instructions to Item 10:

1. Financial statements must be provided when the offeror's financial condition is material to security holder's decision whether to sell, tender or hold the securities sought. The facts and circumstances of a tender offer, particularly the terms of the tender offer, may influence a determination as to whether financial statements are material, and thus required to be disclosed.

2. Financial statements are *not* considered material when: (a) The consideration offered consists solely of cash; (b) the offer is not subject to any financing condition; *and* either: (c) the offeror is a public reporting company under Section 13(a) or 15(d) of the Act that files reports electronically on EDGAR, or (d) the offer is for all outstanding securities of the subject class. Financial information may be required, however, in a two-tier transaction. *See* Instruction 5 below.

3. The filing person may incorporate by reference financial statements contained in any document filed with the Commission, solely for the purposes of this schedule, if: (a) The financial statements substantially meet the requirements of this item; (b) an express statement is made that the financial statements are incorporated by reference; (c) the information incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and (d) if the information incorporated by reference is not filed with this schedule, an indication is made where the information may be inspected and copies obtained. Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given. *See* General Instruction F to this schedule.

4. If the offeror in a third-party tender offer is a natural person, and such person's financial information is material, disclose the net worth of the offeror. If the offeror's net worth is derived from material amounts of assets that are not readily marketable or there are material guarantees and contingencies, disclose the nature and approximate amount of the individual's net worth that consists of illiquid assets and the magnitude of any guarantees or contingencies that may negatively affect the natural person's net worth.

5. Pro forma financial information is required in a negotiated third-party cash tender offer when securities are intended to be offered in a subsequent merger or other transaction in which remaining target securities are acquired and the acquisition of the subject company is significant to the offeror under § 210.11–01(b)(1) of this chapter. The offeror must disclose the financial information specified in Item 3(f) and Item 5 of Form S–4 (§ 239.25 of this chapter) in the schedule filed with the Commission, but may furnish only the summary financial information specified in

Item 3(d), (e) and (f) of Form S–4 in the disclosure document sent to security holders. If pro forma financial information is required by this instruction, the historical financial statements specified in Item 1010 of Regulation M-A (§ 229.1010 of this chapter) are required for the bidder.

6. The disclosure materials disseminated to security holders may contain the summarized financial information specified by Item 1010(c) of Regulation M-A (§ 229.1010 of this chapter) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) of Regulation M-A must be disclosed in the statement. If summarized financial information is disseminated to security holders, include appropriate instructions on how more complete financial information can be obtained. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, the summarized financial information must be accompanied by a reconciliation as described in Instruction 8 of this Item.

7. If the offeror is not subject to the periodic reporting requirements of the Act, the financial statements required by this Item need not be audited if audited financial statements are not available or obtainable without unreasonable cost or expense. Make a statement to that effect and the reasons for their unavailability.

8. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter), unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

Item 11. Additional Information

Furnish the information required by Item 1011 of Regulation M–A (§ 229.1011 of this chapter).

Item 12. Exhibits

File as an exhibit to the Schedule all documents specified by Item 1016 (a), (b), (d), (g) and (h) of Regulation M–A (§ 229.1016 of this chapter).

Item 13. Information Required by Schedule 13E–3

If the Schedule TO is combined with Schedule 13E–3 (§ 240.13e–100), set forth the information required by Schedule 13E–3 that is not included or covered by the items in Schedule TO.

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

_____

(Signature)

_____

(Name and title)

_____

(Date)

Instruction to Signature: The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See §§ 240.12b–11 and 240.14d–1(f) with respect to signature requirements.

46. By revising § 240.14d–101 to read as follows:

§ 240.14d–101 Schedule 14D–9.

Securities and Exchange Commission,
Washington, D.C. 20549

Schedule 14D–9

Solicitation/Recommendation Statement under Section 14(d)(4) of the Securities Exchange Act of 1934

(Amendment No. _____)

_____

(Name of Subject Company)

_____

(Names of Persons Filing Statement)

_____

(Title of Class of Securities)

_____

(CUSIP Number of Class of Securities)

_____

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of the persons filing statement)

[ ] Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

General Instructions:

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature is required. The filer need not respond to the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.

C. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

D. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Act.

E. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

Item 1. Subject Company Information

Furnish the information required by Item 1002(a) and (b) of Regulation M-A (§ 229.1002 of this chapter).

Item 2. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) and (d) of Regulation M-A (§ 229.1003 of this chapter).

Item 3. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(d) of Regulation M-A (§ 229.1005 of this chapter).

Item 4. The Solicitation or Recommendation

Furnish the information required by Item 1012(a) through (c) of Regulation M-A (§ 229.1012 of this chapter).

Item 5. Person/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009(a) of Regulation M-A (§ 229.1009 of this chapter).

Item 6. Interest in Securities of the Subject Company

Furnish the information required by Item 1008(b) of Regulation M-A (§ 229.1008 of this chapter).

Item 7. Purposes of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(d) of Regulation M-A (§ 229.1006 of this chapter).

Item 8. Additional Information

Furnish the information required by Item 1011(b) of Regulation M-A (§ 229.1011 of this chapter).

Item 9. Exhibits

File as an exhibit to the Schedule all documents specified by Item 1016(a), (e) and (g) of Regulation M-A (§ 229.1016 of this chapter).

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

_____
(Signature)

_____
(Name and title)

_____
(Date)

Instruction to Signature: The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See § 240.14d–1(f) with respect to signature requirements.

47. By adding a note at the beginning of Regulation 14E (§ 240.14e–1 through § 240.14e–8) that reads as follows:

Note: For the scope of and definitions applicable to Regulation 14E, refer to § 240.14d–1.

48. By amending § 240.14e–1 by revising paragraph (c) to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(c) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer. This paragraph does not prohibit a bidder electing to offer a subsequent offering period under § 240.14d–11 from paying for securities during the subsequent offering period in accordance with that section.

* * * * *

49. By adding § 240.14e–5 to read as follows:

§ 240.14e–5 Prohibiting purchases outside of a tender offer.

(a) *Unlawful activity.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with a tender offer for equity securities, no covered person may directly or indirectly purchase or arrange to purchase any subject securities or any related securities except as part of the tender offer. This prohibition applies from the time of public announcement of the tender offer until the tender offer expires. This prohibition does not apply to any purchases or arrangements to purchase made during the time of any subsequent offering period as provided for in § 240.14d–11 if the consideration paid or to be paid for the purchases or arrangements to purchase is the same in form and amount as the consideration offered in the tender offer.

(b) *Excepted activity.* The following transactions in subject securities or related securities are not prohibited by paragraph (a) of this section:

(1) *Exercises of securities.* Transactions by covered persons to convert, exchange, or exercise related securities into subject securities, if the covered person owned the related securities before public announcement;

(2) *Purchases for plans.* Purchases or arrangements to purchase by or for a plan that are made by an agent independent of the issuer;

(3) *Purchases during odd-lot offers.* Purchases or arrangements to purchase if the tender offer is excepted under § 240.13e–4(h)(5);

(4) *Purchases as intermediary.* Purchases by or through a dealer-manager or its affiliates that are made in the ordinary course of business and made either:

(i) On an agency basis not for a covered person; or

(ii) As principal for its own account if the dealer-manager or its affiliate is not a market maker, and the purchase is made to offset a contemporaneous sale after having received an unsolicited order to buy from a customer who is not a covered person;

(5) *Basket transactions.* Purchases or arrangements to purchase a basket of securities containing a subject security or a related security if the following conditions are satisfied:

(i) The purchase or arrangement to purchase is made in the ordinary course of business and not to facilitate the tender offer;

(ii) The basket contains 20 or more securities; and

(iii) Covered securities and related securities do not comprise more than 5% of the value of the basket;

(6) *Covering transactions.* Purchases or arrangements to purchase that are made to satisfy an obligation to deliver a subject security or a related security arising from a short sale or from the exercise of an option by a non-covered person if:

(i) The short sale or option transaction was made in the ordinary course of business and not to facilitate the offer;

(ii) In the case of a short sale, the short sale was entered into before public announcement of the tender offer; and

(iii) In the case of an exercise of an option, the covered person wrote the option before public announcement of the tender offer;

(7) *Purchases pursuant to contractual obligations.* Purchases or arrangements to purchase pursuant to a contract if the following conditions are satisfied:

(i) The contract was entered into before public announcement of the tender offer;

(ii) The contract is unconditional and binding on both parties; and

(iii) The existence of the contract and all material terms including quantity, price and parties are disclosed in the offering materials;

(8) *Purchases or arrangements to purchase by an affiliate of the dealer-manager.* Purchases or arrangements to purchase by an affiliate of a dealer-manager if the following conditions are satisfied:

(i) The dealer-manager maintains and enforces written policies and procedures reasonably designed to prevent the flow of information to or from the affiliate that might result in a violation of the federal securities laws and regulations;

(ii) The dealer-manager is registered as a broker or dealer under Section 15(a) of the Act;

(iii) The affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the dealer-manager that direct, effect, or recommend transactions in securities; and

(iv) The purchases or arrangements to purchase are not made to facilitate the tender offer;

(9) *Purchases by connected exempt market makers or connected exempt principal traders.* Purchases or arrangements to purchase if the following conditions are satisfied:

(i) The issuer of the subject security is a foreign private issuer, as defined in § 240.3b–4(c);

(ii) The tender offer is subject to the United Kingdom's City Code on Takeovers and Mergers;

(iii) The purchase or arrangement to purchase is effected by a connected exempt market maker or a connected exempt principal trader, as those terms are used in the United Kingdom's City Code on Takeovers and Mergers;

(iv) The connected exempt market maker or the connected exempt principal trader complies with the applicable provisions of the United Kingdom's City Code on Takeovers and Mergers; and

(v) The tender offer documents disclose the identity of the connected exempt market maker or the connected exempt principal trader and disclose, or describe how U.S. security holders can obtain, information regarding market making or principal purchases by such market maker or principal trader to the extent that this information is required to be made public in the United Kingdom; and

(10) *Purchases during cross-border tender offers.* Purchases or arrangements

to purchase if the following conditions are satisfied:

(i) The tender offer is excepted under § 240.13e–4(h)(8) or § 240.14d–1(c);

(ii) The offering documents furnished to U.S. holders prominently disclose the possibility of any purchases, or arrangements to purchase, or the intent to make such purchases;

(iii) The offering documents disclose the manner in which any information about any such purchases or arrangements to purchase will be disclosed;

(iv) The offeror discloses information in the United States about any such purchases or arrangements to purchase in a manner comparable to the disclosure made in the home jurisdiction, as defined in § 240.13e–4(i)(3); and

(v) The purchases comply with the applicable tender offer laws and regulations of the home jurisdiction.

(c) *Definitions.* For purposes of this section, the term:

(1) *Affiliate* has the same meaning as in § 240.12b–2;

(2) *Agent independent of the issuer* has the same meaning as in § 242.100(b) of this chapter;

(3) *Covered person* means:

(i) The offeror and its affiliates;

(ii) The offeror's dealer-manager and its affiliates;

(iii) Any advisor to any of the persons specified in paragraph (c)(3)(i) and (ii) of this section, whose compensation is dependent on the completion of the offer; and

(iv) Any person acting, directly or indirectly, in concert with any of the persons specified in this paragraph (c)(3) in connection with any purchase or arrangement to purchase any subject securities or any related securities;

(4) *Plan* has the same meaning as in § 242.100(b) of this chapter;

(5) *Public announcement* is any oral or written communication by the offeror or any person authorized to act on the offeror's behalf that is reasonably designed to, or has the effect of, informing the public or security holders in general about the tender offer;

(6) *Related securities* means securities that are immediately convertible into, exchangeable for, or exercisable for subject securities; and

(7) *Subject securities* has the same meaning as in § 229.1000 of this chapter.

(d) *Exemptive authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms or conditions, to any transaction or class of transactions or any security or class of security, or any person or class of persons.

50. By adding § 240.14e–8 to read as follows:

§ 240.14e–8 Prohibited conduct in connection with pre-commencement communications.

It is a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act (15 U.S.C. 78n) for any person to publicly announce that the person (or a party on whose behalf the person is acting) plans to make a tender offer that has not yet been commenced, if the person:

(a) Is making the announcement of a potential tender offer without the intention to commence the offer within a reasonable time and complete the offer;

(b) Intends, directly or indirectly, for the announcement to manipulate the market price of the stock of the bidder or subject company; or

(c) Does not have the reasonable belief that the person will have the means to purchase securities to complete the offer.

By the Commission.

Dated: October 22, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28355 Filed 11–9–99; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday
November 10, 1999

Part III

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research Inviting Applications and Pre-Application Meeting for a New Award for a Rehabilitation Research and Training Center (RRTC) for Fiscal Year (FY) 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B–9]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research, Notice Inviting Applications and Pre-Application Meeting for a New Award for a Rehabilitation Research and Training Center (RRTC) for Fiscal Year (FY) 2000

Purpose: On March 19, 1999 a notice was published in the **Federal Register** (64 FR 13632) inviting applications for a new FY 1999 award for a RRTC on rehabilitation of minorities with disabilities. Satisfactory applications were not received under this priority area. There is a continuing need for this center.

The purposes of this notice are to: (1) Invite interested parties to participate in a pre-application meeting to discuss the funding priority and receive technical assistance through individual consultation and information about the funding priority; and (2) invite applications for a RRTC on rehabilitation of minorities with disabilities.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes or tribal organizations.

Applications Available: November 10, 1999.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priority for a RRTC on rehabilitation of minorities with disabilities and to receive technical assistance through individual consultation and information about the funding priority. The pre-application meeting will be held on December 13, 1999 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 1002, 330 C Street, S.W., Washington, D.C. between 10 a.m. and 12 noon. NIDRR staff will also be available at this location from 1:30 p.m. to 5 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. For further information contact Delores Watkins, U.S. Department of Education, Switzer Building, room 3426, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 205–9195.

NIDRR will make alternative arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed above at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; (b) the regulations for this program in 34 CFR Part 350; and (c) the notice of final priority published on March 19, 1999 in the **Federal Register** (64 FR 13632); and the notice inviting application published on March 19, 1999 in the **Federal Register** (64 FR 13637).

Deadline for Transmittal of Applications: February 4, 2000.

Maximum Award Amount Per Year: $500,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1.

Note: The estimate of funding level and awards in this notice does not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll-free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: http://www.ed.gov/pubs/edpubs.html

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Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: In order to obtain further information about the funding priority and the pre-application meeting on the RRTC on rehabilitation of minorities with disabilities, contact Delores Watkins, U.S. Department of Education, Switzer Building, Room 3426, 330 C Street, S.W., Washington, D.C. 20202, or call (202) 205–9195. Individuals who use a telecommunications device (TDD) may call the TDD number at (202) 205–4475. Internet: Delores__Watkins@ed.gov

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Program Authority: 29 U.S.C. 761 and 762.

Dated: November 4, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–29433 Filed 11–9–99; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Wednesday
November 10, 1999

Part IV

The President

**Notice of November 5, 1999—
Continuation of Iran Emergency**

Federal Register
Vol. 64, No. 217
Wednesday, November 10, 1999

Presidential Documents

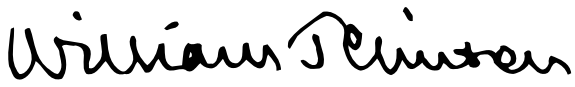
Title 3—

The President

Notice of November 5, 1999

Continuation of Iran Emergency

On November 14, 1979, by Executive Order 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**. The most recent notice appeared in the **Federal Register** on November 12, 1998. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1999. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 5, 1999.

[FR Doc. 99–29668
Filed 11–9–99; 8:45 am]
Billing code 3195–01–P

Reader Aids

Federal Register

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REMINDERS

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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H.R. 1175/P.L. 106–89

To locate and secure the return of Zachary Baumel, a United States citizen, and other Israeli soldiers missing in action. (Nov. 8, 1999; 113 Stat. 1305)

H.J. Res. 62/P.L. 106–90

To grant the consent of Congress to the boundary change between Georgia and South Carolina. (Nov. 8, 1999; 113 Stat. 1307)

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