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Presidential Documents

Title 3—

The President

Proclamation 7276 of February 29, 2000

National Colorectal Cancer Awareness Month, 2000

By the President of the United States of America

A Proclamation

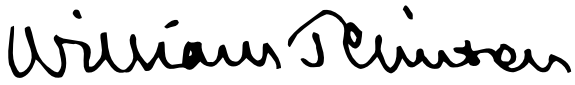
Colorectal cancer is the second leading cause of cancer-related deaths in the United States. Estimates show that physicians will diagnose approximately 130,000 new cases of colorectal cancer this year, and, of those persons diagnosed, more than 56,000 will die from the disease. Colorectal cancer takes such a deadly toll because it usually has no identifiable symptoms and often goes undetected until it is too late to treat.

Our most effective weapon in defeating colorectal cancer is early detection and treatment. Through a regular screening program that includes fecal blood testing, periodic partial or full colon examinations, or both, health professionals can detect and remove pre-cancerous polyps before they turn into cancer. Such cancer screening should become a routine part of preventive health care for anyone over the age of 50, because the risk of developing colorectal cancer increases with age. Individuals with a personal or family history of inflammatory bowel disease, colorectal cancer or polyps, or ovarian, endometrial, or breast cancer are also at a higher risk for developing colorectal cancer.

We can draw hope from the progress that is being made in colorectal cancer research. The National Cancer Institute of the National Institutes of Health recently launched a large research study to test two of the most promising drugs to treat colorectal cancer, and new technologies are giving us more powerful tools to increase the ease and accuracy of colorectal screening. By continuing to support such research, raising awareness of risk factors for the disease, promoting the widespread adoption of regular screening, and encouraging everyone to exercise regularly, we can save thousands of lives each year and dramatically reduce the risk of colorectal cancer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2000 as National Colorectal Cancer Awareness Month. I encourage health care providers, advocacy groups, policymakers, and concerned citizens across the country to help raise public awareness of the risks and methods of prevention of colorectal cancer and to use the power of our knowledge to defeat this silent disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of February, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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Presidential Documents

Proclamation 7277 of February 29, 2000

Women's History Month, 2000

By the President of the United States of America

A Proclamation

Last spring, three women astronauts paused during a shuttle mission to pay homage to the past. Thousands of miles into space, floating above the floor of the shuttle, they raised a women's suffrage banner and posed for a picture. Astronaut Ellen Ochoa, a participant in this special tribute and a member of the President's Commission on the Celebration of Women in American History, said, ''We wanted to show how far women have come in this century and to honor the people who fought for our rights.'' Each year during the month of March, citizens across our country pause to honor the many heroes whose diligence and determination have helped to forge our Nation and enable people like Ellen Ochoa and her colleagues to soar so high.

Women's History Month is about highlighting the extraordinary achievements of women throughout our history, while recognizing the equally significant obstacles they had to overcome along the road to success. It is about the women who bravely donned uniforms and fought for our country. It is about the passion and vision of women educators like Mary McLeod Bethune, who, with only $1.50 in her pocket, founded a school for young black women. It is about the perseverance and pioneering spirit of women like Margaret Chung, the first Chinese American woman physician, who supported herself through medical school by washing dishes and lecturing on China. It is about Alice Paul's fight for the vote and Elizabeth Wanamaker Peratrovich's campaign to end discrimination against Alaska Natives. It is about the writings of Zora Neale Hurston, the paintings of Georgia O'Keeffe, the leadership of labor organizer Dolores Huerta, and the trailblazing artistry of photographer Margaret Bourke-White. It is also about the millions of unsung women whose contributions have made life better for their families and their communities.

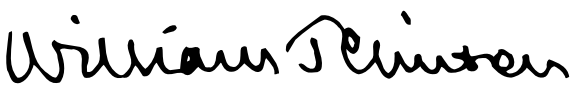
Inspired by the courageous pioneers who came before them, women today continue to shape our Nation's destiny. Last year, Air Force Lieutenant Colonel Eileen Collins became the first woman commander of a space shuttle mission. American violinists Sarah Chang, Pamela Frank, and Nadja Salerno-Sonnenberg were the first women to take home the prestigious Avery Fisher Prize in its 25-year history. And, in a game attended by the largest crowd of all time for a women's sporting event, the U.S. women's soccer team captured the World Cup. Today, 58 women hold seats in the U.S. House of Representatives, and 9 women are United States Senators. More women hold high-level positions in my Administration than in any other in history. And in the private sector, women own nearly 9 million small businesses, employing millions of Americans and contributing significantly to the strength of our economy.

As we honor the past and celebrate the present, we must also focus on the future. Our choices today will have an enormous impact on the destiny of our daughters and granddaughters, our sons and grandsons. We must rededicate ourselves to forging a society in which gender no longer predetermines a person's opportunities or station in life. We must shatter the glass ceiling; eradicate wage discrimination; and ensure that every American has

the tools to meet both family and work responsibilities and to retire in security. By breaking down the remaining barriers and opening wide the doors of opportunity, we can make the future brighter for women and for all Americans.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do herebyproclaim March 2000 as Women's History Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities, and to remember throughout the year the many contributions of courageous women who have made our Nation strong.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of February, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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Presidential Documents

Executive Order 13146 of February 29, 2000

President's Council on the Future of Princeville, North Carolina

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to develop recommendations for Federal agency actions to address the future of Princeville, North Carolina, it is hereby ordered as follows:

Section 1. *Policy.* Princeville, North Carolina (Princeville) has a unique place in American history. This small city in eastern North Carolina was the first city in the United States founded by ex-slaves. In its history, Princeville has been damaged by floods many times. Recently, it was devastated by floods caused by Hurricane Floyd. In response to the damage, appropriate Federal agencies have already begun repair and recovery efforts to assist Princeville. However, it is the policy of this Administration to do more to help this city that occupies such a significant place in our history. Therefore, this order will create an interagency council to develop recommendations for further actions to address the future of Princeville.

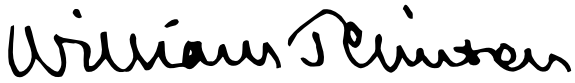
Sec. 2. *Establishment.* (a) There is established the ''President's Council on the Future of Princeville, North Carolina'' (Council). The Council shall comprise the Secretaries of Defense, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, the Director of the Office of Management and Budget (OMB), the Administrator of the Environmental Protection Agency, the Commander of the Army Corps of Engineers, the Administrator of the Small Business Administration, the Director of the Federal Emergency Management Agency, the Assistant to the President for Domestic Policy, the Assistant to the President for Economic Policy, and the Assistant to the President for Intergovernmental Affairs, or their designees, and such other executive department and agency (agencies) representatives as the President may deem appropriate. The Council shall consult with other agencies and State and local governments, as appropriate.

(b) The Director of the Office of Management and Budget, or his designee, shall serve as Chair of the Council.

Sec. 3. *Functions.* The Council shall develop recommendations for the President on further agency and legislative actions that can be undertaken to address the future of Princeville. In developing the recommendations, the Council shall consider, among other things: (a) the unique historic and cultural importance of Princeville in American history; (b) the views and recommendations of the relevant State and local governments, the private sector, citizens, community groups, and non-profit organizations, on actions that they all could take to enhance the future of Princeville and its citizens; and (c) agency assessments andrecommendations to repair and rebuild Princeville, and, to the extent practicable, protect Princeville from future floods. The Council, through its Chair, shall submit its recommendations to the President. Where appropriate, the Council's recommendations shall include draft legislation requesting additional funding or other authorities to aid in the reconstruction and protection of Princeville.

Sec. 4. *Coordination.* At the request of the Chair, agencies shall cooperate with and provide information to the Council.

Sec. 5. *Judicial Review.* This order is not intended to, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, it agencies, its officers or employees, or any other person.



THE WHITE HOUSE,
February 29, 2000.

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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–009–1]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pink bollworm regulations by removing the previously regulated area in Poinsett County, AR, from the list of suppressive areas for pink bollworm. We are also removing Arkansas from the list of States quarantined because of the pink bollworm. We are taking this action because trapping surveys show that the pink bollworm no longer exists in this area. This action is necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: This interim rule is effective March 2, 2000. We invite you to comment on this docket. We will consider all comments that we receive by May 1, 2000.

ADDRESSES: Please send your comment and three copies to:

Docket No. 00–009–1, Regulatory Analysis and Development, PPD APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238

Please state that your comment refers to Docket No. 00–009–1.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Bill Grefenstette, Assistant Director, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 138, Riverdale, MD 20737–1236; (301) 734–8676.

SUPPLEMENTARY INFORMATION:

Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the world's most destructive pests of cotton. This insect spread to the United States from Mexico in 1917 and now exists throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm regulations, contained in 7 CFR 301.52 through 301.52–10 (referred to below as the regulations), quarantine certain States and restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the interstate spread of the pink bollworm.

Regulated areas for the pink bollworm are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of pink bollworm into noninfested areas.

Prior to the effective date of this document, a portion of Poinsett County, AR, was designated as a suppressive area. Based on 2 years of negative trapping surveys conducted by inspectors of Arkansas and the Animal and Plant Health Inspection Service, we have determined that the pink bollworm no longer exists in this area. We are, therefore, removing this area from the list of suppressive areas in § 301.52–2a.

As of the effective date of this document, there will be no areas in Arkansas regulated because of the pink bollworm. We are, therefore, also removing Arkansas from the list of States in § 301.52–2a quarantined because of the pink bollworm.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to relieve unnecessary restrictions on the interstate movement of regulated articles from areas where the pink bollworm no longer exists.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the pink bollworm regulations by removing the previously regulated area in Poinsett County, AR, from the list of suppressive areas for pink bollworm. We are also removing Arkansas from the list of States quarantined because of the pink bollworm. We are taking this action because trapping surveys show that the pink bollworm no longer exists in this area. This action is necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604

of the Regulatory Flexibility Act in our final regulatory flexibility analysis.

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.52 [Amended]

2. In § 301.52, paragraph (a) is amended by removing the word ''Arkansas,''.

§ 301.52–2A [Amended]

3. Section 301.52–2a is amended by removing the entire entry for Arkansas.

Done in Washington, DC, this 24th day of February 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5054 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150–AG08

Revision of Fee Schedules; 100 Percent Fee Recovery, FY 1999: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: On July 20, 1999 (64 FR 38816), the NRC published a document that corrected a final rule that appeared in the **Federal Register** on June 10, 1999 (64 FR 31448) concerning the licensing, inspection, and annual fees charged to its applicants and licensees in compliance with the Omnibus Budget Reconciliation Act of 1990. This document corrects an inadvertent typographical error in the July 20, 1999, correction document.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION: In the final rule correction, FR Doc. 99–18469, published on July 20, 1999 (64 FR 38816), in the third column on page 38816, instruction number 3 for § 170.12 is corrected to read as follows:

3. On page 31470, in the first column, paragraphs (b)(7)(ii) and (b)(7)(iii) are redesignated as paragraphs (b)(7)(ii)(B) and (b)(7)(ii)(C), respectively, and a new paragraph (b)(7)(ii)(A) is added to read as follows:

§ 170.12 Payment of fees.

* * * * *

(b) * * *

(7) * * *

(ii)(A) In the case of a design which has been approved but not certified and for which no application is pending, if the design is not referenced, or if all costs are not recovered within five years after the date of the preliminary design approval (PDA), or the final design approval (FDA), the applicant shall pay the costs, or remainder of those costs, at that time.

* * * * *

Dated at Rockville, Maryland, this 24th day of February, 2000.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 00–4882 Filed 3–1–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–336–AD; Amendment 39–11495; AD 99–27–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 99–27–14 that was published in the **Federal Register** on January 6, 2000 (65 FR 697). The typographical error resulted in a reference to an incorrect AD number. This AD is applicable to all Airbus Model A340–211, –212, –213, –311, –312, and –313 series airplanes. This AD requires repetitive operational tests to ensure proper operation of the actuator of the secondary locks of the thrust reversers, and corrective actions, if necessary.

EFFECTIVE DATE: Effective January 21, 2000.

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

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 99–27–14, amendment 39–11495, applicable to all Airbus Model A340–211, –212, –213, –311, –312, and –313 series airplanes, was published in the **Federal Register** on January 6, 2000 (65 FR 697). That AD requires repetitive operational tests to ensure proper operation of the actuator of the secondary locks of the thrust reversers, and corrective actions, if necessary.

As published, AD 99–27–14 contains an erroneous reference to the AD number cited in the paragraph preceding the applicability of the AD. That paragraph incorrectly references AD 99–01–05, Amendment 39–10980. The correct reference is AD 99–01–15, Amendment 39–10980.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains January 21, 2000.

§ 39.13 [Corrected]

On page 699, in the first column, the paragraph preceding the applicability of AD 99–27–14 is corrected to read as follows:

99–27–14 Airbus Industrie: Amendment 39–11495. Docket 99–NM–336–AD. Supersedes AD 99–01–15, Amendment 39–10980.

* * * * *

Issued in Renton, Washington, on February 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5010 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0044]

RIN 0910–AB97

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure of Function of the Body; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 2000 (65 FR 1000). The document issued final regulations defining the types of statements that can be made concerning the effect of a dietary supplement on the structure or function of the body.

DATES: The final rule is effective February 7, 2000.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–53 appearing on page 1000 in the **Federal Register** of Thursday, January 6, 2000, the following corrections are made:

1. On page 1034, in the 3d column, in the 2d full paragraph, beginning in the 16th line, the phrase ''The agency also notes that as discussed'' is corrected to read ''The agency also notes that as discussed in comment 95 of section III.A of this document''.

2. On page 1046, in the 2d column, in the 28th line, the sentence is corrected to read ''Even this 62 percent figure is too high, however, because RTI over-sampled herbal products, which have a higher probability of claims. Thus, FDA believes that the true percentage of dietary supplement products with claims would not exceed 60 percent and has used this figure as its final estimate.''

3. On page 1047, in the 2d column, in the 2d full paragraph, in the 14th line ''not'' is corrected to read ''now''.

Dated: February 25, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–4946 Filed 3–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8877]

RIN 1545–AX82

Tax Shelter Disclosure Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring certain corporate taxpayers to file a statement with their Federal corporate income tax return under section 6011(a). The temporary regulations affect corporations participating in certain reportable transactions. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–103735–00 published elsewhere in this issue of the **Federal Register.**

DATES: *Effective date.* These temporary regulations are effective for Federal corporate income tax returns filed after February 28, 2000.

Applicability date. For dates of applicability, see § 1.6011–4T(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622–3080, or Mary Beth Collins, (202) 622–3070, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1685. Responses to these collections of information are mandatory.

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

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The Treasury Department and the IRS are concerned about the proliferation of corporate tax shelters. These temporary regulations are intended to provide the Service with early notification of large corporate transactions with characteristics that may be indicative of such tax shelter activity.

Accordingly, this document amends 26 CFR part 1 regarding the general filing requirement for persons required to file a return for a taxable year with respect to a tax imposed under section 11. Section 6011(a) provides that any person made liable for any tax imposed by the Internal Revenue Code (Code), or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary of the Treasury.

Explanation of Provisions

I. Disclosure Statement Required for Certain Corporate Taxpayers

The temporary regulations provide that every person that is required to file a return for a taxable year with respect to any tax imposed under section 11 (corporate taxpayers) and that has participated in a reportable transaction shall attach a disclosure statement to its return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation

in the reportable transaction. In addition, a copy of the disclosure statement must be sent to the IRS in Washington, DC for the first taxable year for which the transaction is disclosed on the taxpayer's Federal income tax return. The temporary regulations outline the form and content of the disclosure statement and also provide an example of the statement.

Where the temporary regulations require a taxpayer to attach a disclosure statement to its return, the information required to be set forth thereon is a required part of the return to the same extent as information required pursuant to prescribed forms. See § 1.6011–1. Therefore, when a taxpayer verifies its return, which includes a declaration that the return is complete, a taxpayer affirms that it has accurately made all disclosures required by these temporary regulations.

In the event of an underpayment attributable to a reportable transaction, a taxpayer's failure to satisfy the disclosure requirements of the temporary regulations may affect its exposure to penalties under sections 6662 and 6663 of the Code. Section 6664(c)(1) provides that such penalties may not be imposed with respect to any portion of a taxpayer's underpayment ''if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.'' (Emphasis added.) Whether a taxpayer is considered to have satisfied the requirements of section 6664(c)(1) is determined on a case-by-case basis, taking into account all pertinent facts and circumstances. See § 1.6664–4(b)(1).

The fact that a professional tax advisor has advised a taxpayer that its return position is more likely than not the proper tax treatment is not necessarily sufficient to satisfy the requirements of section 6664(c)(1). If a taxpayer has an underpayment attributable to its participation in a reportable transaction that has not been properly disclosed on its return, the nondisclosure could indicate that the taxpayer has not acted in ''good faith'' with respect to the underpayment, even if the taxpayer's return position has sufficient legal justification to meet the minimum requirements of section 6664(c)(1). In such a case, the determination of whether a taxpayer has acted in ''good faith'' will depend on all of the facts and circumstances, including the reason or reasons why the taxpayer failed to make the required disclosure.

II. Reportable Transactions

The temporary regulations define two categories of reportable transactions. The first category includes certain types of transactions identified by the Treasury and the Service as tax avoidance transactions. The second category includes transactions that warrant further scrutiny because they possess certain identified characteristics that are common in corporate tax shelters.

The regulations require disclosure only for large transactions that provide tax savings in excess of certain dollar thresholds (the projected tax effect test). In addition, the regulations contain exceptions to ensure that normal business transactions are not subject to disclosure. The fact that a transaction is reportable or not reportable under these regulations shall not affect the legal determination whether the tax benefits claimed with respect to the transaction are allowable.

The first category of reportable transactions includes any transaction that is the same as or substantially similar to one of the specified types of tax avoidance transactions that the IRS has identified by published guidance as a listed transaction for purposes of section 6011 and that is expected to reduce the taxpayer's Federal income tax liability by more than $1 million in any single taxable year or by a total of more than $2 million for any combination of taxable years. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000.

The second category of reportable transactions includes transactions entered into after February 28, 2000 that are expected to reduce a taxpayer's Federal income tax liability by more than $5 million in any single taxable year or by a total of more than $10 million for any combination of taxable years and that have at least two of the following characteristics:

(A) The taxpayer has participated in the transaction under conditions of confidentiality (as defined in § 301.6111–2T(c)).

(B) The taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax benefits from the transaction will not be sustained, including, but not limited to, recission rights, the right to a full or partial refund of fees paid to any person, fees that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion of the transaction to the taxpayer).

(C) The taxpayer's participation in the transaction was promoted, solicited, or recommended by one or more persons who have received or are expected to receive fees or other consideration with an aggregate value in excess of $100,000, and such person or persons' entitlement to such fees or other consideration was contingent on the taxpayer's participation in the transaction.

(D) The expected treatment of the transaction for Federal income tax purposes in any taxable year differs or is expected to differ by more than $5 million from the treatment of the transaction for purposes of determining book income as taken into account on the schedule M–1 (or comparable schedule) on the taxpayer's Federal corporate income tax return for the same period.

(E) The transaction involves the participation of a person that the taxpayer knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer (such as a tax exempt entity or a foreign person), and the taxpayer knows or has reason to know that such difference in tax position has permitted the transaction to be structured on terms that are intended to provide the taxpayer with more favorable Federal income tax treatment than it could have obtained without the participation of such person (or another person in a similar tax position).

(F) The expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country.

However, a transaction that has at least two of the foregoing characteristics is not a reportable transaction if any of the following conditions is satisfied—

(A) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that it would have participated in the same transaction on substantially the same terms irrespective of the expected Federal income tax benefits;

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that

there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Code for substantially similar transactions;

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction; or

(D) The transaction is identified in published guidance as being excepted from disclosure.

A transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business.

III. Record Retention

The taxpayer must retain all documents related to a transaction subject to disclosure under this section until the expiration of the statute of limitations for the first taxable year for which a disclosure statement is filed with its tax return. (This obligation is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents include, but are not limited to, the following: all marketing materials related to the transaction; all written analyses used in decision-making related to the transaction; all correspondence and agreements related to the transaction between the taxpayer and any promoter, advisor, lender, or other party to the reportable transaction; all documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and all documents, if any, referring to the business purposes for the reportable transaction.

IV. Effective Date

The temporary regulations apply to Federal corporate income tax returns filed after February 28, 2000.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for filing the statement required by these regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. 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 Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Chief Counsel (Passthroughs and Special Industries). 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 parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.6011–4T also issued under 26 U.S.C. 6001 and 6011(a).* * *

2. Section 1.6011–4T is added to read as follows:

§ 1.6011–4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary)—

(a) *In general.* Every taxpayer that is required to file a return for a taxable year with respect to a tax imposed under section 11 and that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b) of this section must attach to its return for the taxable year described in paragraph (d) of this section a disclosure statement in the form prescribed by paragraph (c) of this section. For this purpose, a taxpayer will have indirectly participated in a transaction if its Federal income tax liability is affected by the transaction even if it is not a direct party to the transaction (*e.g.,* it participates through a partnership or through a controlled entity). A separate disclosure statement is required for each reportable transaction. The fact that a taxpayer files a disclosure statement for a reportable transaction shall not affect the legal determination whether the tax benefits claimed with respect to the transaction are allowable.

(b) *Definition of reportable transaction*—(1) *In general.* A reportable transaction is a transaction that is described in either paragraph (b)(2) or (3) of this section and that meets the projected tax effect test in paragraph (b)(4) of this section. The term *transaction* includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, and includes any series of related steps carried out as part of a prearranged plan and any series of substantially similar transactions entered into in the same taxable year.

(2) *Listed transactions.* A transaction is described in this paragraph (b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of section 6011. However, a listed transaction is not treated as a reportable transaction if it has affected the taxpayer's Federal income tax liability as reported on any tax return filed on or before February 28, 2000. The fact that a transaction becomes a listed transaction does not imply that the transaction was not otherwise a reportable transaction prior thereto.

(3) *Other reportable transactions*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, a transaction is described in this paragraph (b)(3) if it is entered into after February 28, 2000 and has at least two of the following characteristics:

(A) The taxpayer has participated in the transaction under conditions of confidentiality (as defined in § 301.6111–2T(c)).

(B) The taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax benefits from the transaction will not be sustained, including, but not limited to, recission rights, the right to a full or partial refund of fees paid to any person, fees

that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion of the transaction to the taxpayer).

(C) The taxpayer's participation in the transaction was promoted, solicited, or recommended by one or more persons who have received or are expected to receive fees or other consideration with an aggregate value in excess of $100,000, and such person or persons' entitlement to such fees or other consideration was contingent on the taxpayer's participation in the transaction.

(D) The expected treatment of the transaction for Federal income tax purposes in any taxable year differs or is expected to differ by more than $5 million from the treatment of the transaction for purposes of determining book income as taken into account on the schedule M–1 (or comparable schedule) on the taxpayer's Federal corporate income tax return for the same period.

(E) The transaction involves the participation of a person that the taxpayer knows or has reason to know is in a Federal income tax position that differs from that of the taxpayer (such as a tax exempt entity or a foreign person), and the taxpayer knows or has reason to know that such difference in tax position has permitted the transaction to be structured on terms that are intended to provide the taxpayer with more favorable Federal income tax treatment than it could have obtained without the participation of such person (or another person in a similar tax position).

(F) The expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country.

(ii) *Exceptions.* A transaction is not a reportable transaction under paragraph (b)(3) of this section if paragraph (b)(3)(ii)(A), (B), (C), or (D) of this section is satisfied.

(A) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that it would have participated in the same transaction on substantially the same terms irrespective of the expected Federal income tax benefits.

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Internal Revenue Code (Code) for substantially similar transactions.

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Such a determination must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, authoritative administrative guidance, and judicial decisions that establish principles of general application in the tax law (*e.g., Gregory* v. *Helvering,* 293 U.S. 465 (1935)).

(D) The transaction is identified in published guidance as being excepted from disclosure under this section.

(iii) *Ordinary course of business.* For purposes of paragraphs (b)(3)(ii)(A) and (B) of this section, a transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business.

(4) *Projected tax effect*—(i) *In general.* A transaction described in paragraph (b)(2) of this section meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than $1 million in any single taxable year or by a total of more than $2 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. A transaction described in paragraph (b)(3) of this section meets the projected tax effect test if, at the time the taxpayer enters into the transaction or at any time thereafter, the taxpayer reasonably estimates that the transaction will reduce the taxpayer's Federal income tax liability by more than $5 million in any single taxable year or by a total of more than $10 million for any combination of taxable years in which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability. For purposes of this paragraph (b)(4), a transaction will be treated as reducing a taxpayer's Federal income tax liability for a taxable year if, and to the extent that, disallowance of the tax treatment claimed or expected to be claimed would result in an increase in the taxpayer's Federal income tax liability for that year. These dollar thresholds may be adjusted pursuant to forms prescribed for reporting under this section and the instructions to such forms.

(ii) *Estimation of projected tax effect.* A taxpayer's estimate of the effect of a transaction on its Federal income tax liability shall take into account all projected Federal income tax consequences of the transaction, including all deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce the taxpayer's Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit. The estimate shall not take into account the potential Federal income tax effect of any other transaction or transactions that the taxpayer might have entered into if the taxpayer had not entered into the transaction in question. Gross income may not be taken into account if the elements of the transaction that result in the creation of the gross income are not necessary to achieve the intended tax results of the transaction, whether or not these elements are an integral part of the transaction. For example, gross income may not be taken into account to the extent that it would have been reasonably possible for the taxpayer to have participated in the transaction in a manner that would have been expected to produce less gross income without a commensurate effect on the other tax consequences of the transaction. In addition, gain on property that the taxpayer acquired independent of its participation in the transaction may not be taken into account.

(5) *Examples.* The following examples illustrate the application of paragraph (b) of this section. Assume, for purposes of these examples, that the transactions are not the same as or substantially

similar to any of the types of transactions that the IRS has identified as listed transactions under section 6011 and, thus, are not described in paragraph (b)(2) of this section. The examples are as follows:

Example 1. In March of 2000, C, a domestic corporation, invests $100 million to purchase certain financial instruments the terms of which have been structured to enable the holder to claim a deductible tax loss upon the disposition of one or more of the instruments a short time after acquisition while deferring gain on the retained instruments. C purchased the instruments on the recommendation of X, which is expected to receive direct or indirect compensation in excess of $100,000 contingent on C's purchase. C disposes of certain of the financial instruments in November of 2000, and reports a loss from the disposition of those financial instruments on its 2000 Federal corporate income tax return which reduces its reported Federal income tax liability by more than $5 million. That loss is not reflected on C's income statement for purposes of determining book income as taken into account on the schedule M–1 on C's Federal corporate income tax return. Further, C is unable to reasonably determine that it would have entered into the transaction irrespective of the Federal income tax benefits, or that the transaction is a customary form of transaction giving rise to tax consequences for which there is a long-standing and generally accepted understanding that such tax consequences are allowable under the Code for similar transactions, or that the Commissioner would have no reasonable basis to deny the claimed loss. The transaction involving C's purchase and disposition of the financial instruments has the characteristics described in paragraphs (b)(3)(i)(C) and (D) of this section. None of the exceptions in paragraph (b)(3)(ii) of this section applies. Therefore, the transaction involving C's purchase and disposition of the financial instruments is a reportable transaction because it is described in paragraph (b)(3) of this section.

Example 2. In the year 2001, D, a domestic corporation, completes construction of an office building to be used in its business. After completion of the building but before D files its tax return for the year 2001, it is approached by Y, a professional services organization, which advises D that Y has developed a set of programs that will enable D to maximize its depreciation deductions with respect to the building and the related furniture and fixtures. Y allows D to review Y's programs subject to D's agreement that it will not use any portion of the programs in establishing its depreciation accounts for Federal tax purposes unless it pays Y a fee of $150,000. In addition, D makes a commitment to Y that it will not divulge any information relating to the programs to any person, whether or not D decides to use the programs. D agrees to use Y's programs for purposes of computing its depreciation allowances for 2001 and later taxable years. D expects its use of the programs to reduce its Federal income tax liability by more than $10 million over the life of the building. However, D reasonably determines that it would have constructed and owned the office building in the same manner irrespective of the enhanced depreciation that it expects to derive from the use of Y's programs. Therefore, regardless of whether D's depreciation deductions on the building may be subject to disallowance, the transaction encompassing the construction of the building and the use of Y's programs is not a reportable transaction by reason of the exception under paragraph (b)(3)(ii)(A) of this section.

Example 3. E is a domestic corporation, which is a calendar year taxpayer. E is engaged in the leasing business. In 2001, E enters into a large number of substantially similar arrangements described in paragraph (b)(3)(i) of this section under which it acquires and leases tangible personal property to U.S. persons who use such property in their businesses. E treats the leases as leases for Federal income tax purposes and as loans for financial accounting purposes. During the first three taxable years in which the leases are in effect, E reasonably expects that its reported taxable income will be more than $30 million lower than it would be if the leases were treated as loans for Federal income tax purposes, giving rise to a total expected reduction of E's Federal income tax liability for those years in excess of $10 million. E cannot conclude that it would have entered into the leases on substantially the same terms irrespective of the expected Federal income tax benefits, nor can it conclude that the Commissioner would have no reasonable basis to deny its tax treatment of the leases. However, E does reasonably determine that the terms of the leases are consistent with customary commercial form in the leasing industry, and that there is a long-standing and generally accepted understanding that the combination of Federal income tax consequences it is claiming with respect to the leases are allowable under the Code for similar transactions. The substantially similar leases would be treated for purposes of this section as a single transaction that would satisfy the projected tax effect test described in paragraph (b)(4) of this section. However, the leases would not be a reportable transaction by reason of the exception under paragraph (b)(3)(ii)(B) of this section.

(c) *Form and content of disclosure statement.* (1) The disclosure statement for each reportable transaction must include the information required by paragraph (c)(1)(i) through (c)(1)(vi) of this section and shall be presented in a format (preferably no longer than one page) similar to that shown in the *Example* in paragraph (c)(2) of this section or on such form as may be prescribed for use under this section.

(i) The name, if any, by which the transaction is known or commonly referred to by the taxpayer; if no name exists, provide a short-hand designation of this transaction to distinguish it from other reportable transactions in which the taxpayer may have participated (or may participate in the future).

(ii) A statement indicating whether, to the best knowledge of the taxpayer, the transaction has been registered as a tax shelter under section 6111. If the transaction has been registered as a tax shelter under section 6111, indicate whether Form 8271, ''Investor Reporting of Tax Shelter Registration Number'', has been filed with the taxpayer's return and provide the registration number, if any, that has been assigned to the tax shelter.

(iii) A brief description of the principal elements of the transaction that give rise to the expected tax benefits.

(iv) A brief description of the expected tax benefits of the transaction (*e.g.,* loss deductions, interest deductions, rental deductions, foreign tax credits, etc.).

(v) An identification of each taxable year (including prior taxable years) for which the transaction is expected to have the effect of reducing the taxpayer's Federal income tax liability and an estimate (which may be rounded to the nearest $1 million) of the amount by which the transaction is expected to reduce the taxpayer's Federal income tax liability for each such taxable year.

(vi) The names and addresses of any parties who promoted, solicited, or recommended the taxpayer's participation in the transaction and who had a financial interest, including the receipt of fees, in the taxpayer's decision to participate.

(2) *Example.* The following example illustrates the application of paragraph (c) of this section: In January of 1999, X, a domestic corporation which is a calendar year taxpayer, entered into an arrangement under which it purported to lease a building owned and occupied by the government of a municipality located in foreign country W and lease the building back to the municipal government. X determines that the transaction is a reportable transaction described in paragraph (b)(1) of this section because it is described in paragraph (b)(2) of this section and satisfies the projected tax effect test in paragraph (b)(4) of this section. As of February 28, 2000, X had not filed its 1999 Federal corporate income tax return. The following form of disclosure statement would satisfy the requirements described in paragraph (c)(1) of this section.

DISCLOSURE STATEMENT FOR REPORTABLE TRANSACTION

Corporation X (EIN)
(address)

1. Identification of transaction: LILO—Country W.

2. Registration status under section 6111: Not registered.

3. Description of transaction: We leased a building from a municipality in W. We made an advance payment of rent of $89 million. The lease term is 34 years. The foreign municipality subleased the asset back from us for a term of 20 years. The foreign municipality has the option, at the end of the sublease term, to buy out our interest for $50 million. Our advance lease payment has been financed with a bank loan of $60 million. The foreign municipality placed $75 million of the advance rental payment in special accounts to satisfy the sublease and buyout obligations.

4. Principal tax benefits: Deductions for rental and interest payments in excess of income from leaseback rental payments.

5. Estimates of expected reduction of Federal income tax liability for affected taxable years: 1999–2002, $5 million per year; 2003–2013, $4 million per year; and 2014–2017, $3 million per year.

6. Promoters:

Financial Institution Y
(address)
(telephone number)

Professional Service Firm Z
(address)
(telephone number)

(d) *Time of providing disclosure*—(1) *In general.* The disclosure statement for a reportable transaction shall be attached to the taxpayer's Federal corporate income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation in the transaction. In addition, at the same time that the disclosure statement is first attached to the taxpayer's Federal income tax return, a copy of that disclosure statement must be sent to: Internal Revenue Service LM:PF, Large & Mid-Size Business Division, 1111 Constitution Ave., N.W., Washington, DC 20224. If a transaction becomes a reportable transaction on or after the date the taxpayer has filed its return for the first taxable year for which the transaction affected the taxpayer's Federal income tax liability (*e.g.,* there is a change in facts affecting the expected Federal income tax effect of the transaction, or the transaction subsequently becomes one identified in published guidance as a listed transaction described in (b)(2) of this section), the disclosure statement shall be filed as an attachment to the taxpayer's Federal corporate income tax return next filed after the date the transaction becomes a reportable transaction. If a disclosure statement is required as an attachment to a Federal corporate income tax return that is filed earlier than 180 days after February 28, 2000, the taxpayer may either attach the disclosure statement to the return, or file the disclosure statement as an amendment to the return no later than 180 days after February 28, 2000.

(2) *Example.* The following example illustrates the application of this paragraph (d): In December of 2000, F, a domestic corporation which is a calendar year taxpayer, enters into a transaction described in paragraph (b)(3) of this section but not described in paragraph (b)(2) of this section. At the time F enters into the transaction and thereafter, F reasonably estimates that the transaction will reduce F's Federal income tax liability by $2 million in any single taxable year and by a total of $8 million for any combination of taxable years in which the transaction is expected to have the effect of reducing F's Federal income tax liability. Consequently, the transaction does not meet the projected tax effect test described in paragraph (b)(4) of this section for transactions described in paragraph (b)(3) of this section. On March 1, 2002, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Thus, upon issuance of the notice, the transaction becomes a transaction described in paragraph (b)(2) of this section. As a result of the lower dollar thresholds of the projected tax effect test with respect to transactions described in (b)(2) of this section, the transaction meets the projected tax effect test in paragraph (b)(4) of this section. Consequently, the transaction becomes a reportable transaction described in paragraph (b)(1) of this section, and F is required to file a disclosure statement meeting the requirements of paragraph (c)(1) of this section for the transaction as an attachment to F's next filed Federal corporate income tax return. If F's 2001 return has not been filed on or before the date the Service identifies the transaction as a listed transaction, the disclosure statement must be attached to F's 2001 return.

(e) *Retention of documents.* The taxpayer must retain all documents related to a transaction subject to disclosure under this section until the expiration of the statute of limitations applicable to the first taxable year for which disclosure of the transaction was made in accordance with the requirements of this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents include, but are not limited to, the following: all marketing materials related to the transaction; all written analyses used in decision-making related to the transaction; all correspondence and agreements related to the transaction between the taxpayer and any promoter, advisor, lender, or other party to the reportable transaction; all documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and all documents, if any, referring to the business purposes for the reportable transaction.

(f) *Affiliated groups.* For purposes of this section, an affiliated group of corporations that joins in the filing of a consolidated return under section 1501 shall be considered a single taxpayer.

(g) *Effective date.* This section applies to Federal corporate income tax returns

filed after February 28, 2000. However, paragraph (e) of this section applies to documents and other records that the taxpayer acquires, prepares, or has in its possession on or after February 28, 2000.

PART 602—[AMENDED]

3. In § 602.101, paragraph (b) is amended by adding the entry for § 1.6011–4T to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6011–4T	1545–1685
* * * * *	

Approved: February 23, 2000.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–4842 Filed 2–28–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8875]

RIN 1545–AX80

Requirements To Maintain List of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring the maintenance of lists of investors in potentially abusive tax shelters described in section 6112. The temporary regulations affect organizers of potentially abusive tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–103736–00 published elsewhere in this issue of the **Federal Register**.

DATES: *Effective date.* These temporary regulations are effective February 28, 2000.

Applicability date. For dates of applicability, see A–22 of § 301.6112–1T of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622–3080, or Mary Beth Collins, (202) 622–3070, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1686. Responses to these collections of information are mandatory.

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

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR part 301 regarding the requirement to maintain lists of investors in potentially abusive tax shelters under section 6112. Section 6708 provides penalties for failing to maintain the investor list under section 6112.

The temporary regulations have been drafted in question and answer format. No inference should be drawn regarding issues not raised or because certain questions and not others are included. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register**.

Explanation of Provisions

I. Potentially Abusive Tax Shelter

Section 6112 provides that any person who organizes or sells any interest in a potentially abusive tax shelter must maintain a list identifying each person who was sold an interest in such shelter. A potentially abusive tax shelter under section 6112 includes any investment that is required to be registered with the IRS as a tax shelter under section 6111, and any other entity, plan, or arrangement, if specified in regulations, that has a potential for tax avoidance or evasion. Any person who is required to maintain a list under section 6112 must make the list available for inspection upon request by the Secretary of the Treasury, and generally must retain any information required to be included on the list for seven years. References in these regulations to the term ''transaction'' include all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

Section 6112 authorizes the Secretary of the Treasury to specify in regulations transactions other than those subject to registration under section 6111 that have a potential for tax avoidance or evasion. The conference report accompanying section 6112 explains that ''in designating these other arrangements, the Secretary may, for example, specifically identify types of investments, or may provide that any investment falling within a modified form of the definition of tax shelter for registration purposes is subject to the listing requirement.'' H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 982 (1984).

Concurrent with the addition of these amendments to the temporary regulations under section 6112, the Service has issued temporary and proposed regulations under section 6111(d) relating to the registration of confidential corporate tax shelters. These regulations under section 6112 follow a modified form of the definition of a confidential corporate tax shelter under section 6111(d)(1) for purposes of defining the potentially abusive tax shelters that are subject to the list requirement under section 6112. Under the modified definition, as under section 6111(d)(1)(A), the term ''potentially abusive tax shelter'' includes a transaction for which a significant purpose of the structure of the transaction is the avoidance or evasion of Federal income tax. The rules set forth in the temporary regulations under section 6111(d) are applicable in determining whether a significant purpose of the structure of a transaction

is the avoidance or evasion of Federal income tax.

For purposes of section 6112, the definition of tax shelter under section 6111(d)(1) has been modified in two respects: (1) The limitation of section 6111(d)(1)(B) to transactions offered to any potential participant under conditions of confidentiality does not apply for purposes of section 6112; and (2) the limitation of section 6111(d)(1)(C) to transactions in which the promoters may receive fees in excess of $100,000 does not apply for purposes of section 6112. Therefore, certain categories of transactions that are not subject to registration under section 6111 may be subject to the list requirement of section 6112, including any non-confidential transactions offered directly or indirectly to corporate participants a significant purpose of the structure of which is the avoidance or evasion of Federal income tax within the meaning of section 6111(d) and the regulations thereunder.

Section 301.6111–2T provides a procedure for obtaining rulings as to whether a transaction is subject to registration under § 301.6111–2T. The same procedure shall be available to a person who is uncertain whether a transaction constitutes a potentially abusive tax shelter for which a list must be maintained under section 6112, and the requirement to maintain a list available for inspection by the Secretary shall be suspended during the period that such ruling request is pending and for sixty days thereafter.

II. Organizer Also Includes Promoter

The regulations provide that for purposes of the list requirement, an organizer includes a promoter as defined in section 6111(d)(2), as well as any person designated as an organizer under the existing temporary regulations. A promoter is any person who participates in the organization, management, or sale of the tax shelter or any related person (within the meaning of section 267 or 707).

III. Information To Be Included on List

Section 6112 authorizes the Secretary of the Treasury to specify the information that organizers and sellers of interests in potentially abusive tax shelters are required to include as part of the lists of persons who were sold interests in the tax shelters. The temporary regulations modify the information that must be included as part of the lists and made available for inspection by the IRS. The regulations provide that in addition to the information currently required under A–17 of § 301.6112–1T, each list must include (1) a detailed description of the tax shelter that describes both the structure of the tax shelter and the intended tax benefits for participants in the tax shelter, (2) the amount of money invested or to be invested by each person who is required to be included on the list, (3) a summary or schedule of the tax benefits that each such person is intended or expected to derive from participation in the tax shelter, if known by the organizer or seller, and (4) copies of any additional written materials, including tax analyses and opinions, relating to the tax shelter that have been given to any potential participant in the tax shelter or to any representatives, tax advisors, or agents of potential participants by the organizer or seller or by any other person who has participated in the offering of the tax shelter (excluding any written materials that the organizer or seller has never possessed).

Generally, a separate list must be maintained for each potentially abusive tax shelter. Moreover, the temporary regulations provide that interests in substantially similar tax shelter transactions that are sold to different persons generally are to be treated as interests in the same tax shelter for purposes of section 6112. To ensure that the IRS is able to identify all of the tax shelters that have been offered by an organizer or seller and that are structured in a similar manner, the regulations further provide that the list for each tax shelter must identify each other tax shelter (if any) that the organizer or seller has offered that has not been treated as part of the same tax shelter, but that utilizes a similar structure or is intended to produce similar tax benefits.

It is recognized that, in the absence of a limitation on the disclosure obligation under section 6112, there could be situations in which section 6112 and the temporary regulations would require an organizer or a seller of a potentially abusive tax shelter to disclose information that is otherwise protected by the common law attorney-client privilege or by the privilege for confidential tax advice under section 7525(a). The temporary regulations provide that, in any case in which an organizer or a seller of a potentially abusive tax shelter believes that information required to be maintained as part of the list for that tax shelter is protected by the attorney-client privilege or constitutes confidential tax advice protected under section 7525(a), such information may be withheld from disclosure to the Service, provided that the organizer or seller provides the Service with a statement signed under penalties of perjury with information and representations required in that statement that are the same as those required by the regulations under section 6111(d) if the promoter of a confidential corporate tax shelter asserts that information required to be included with Form 8264, ''Application for Registration of a Tax Shelter,'' is privileged.

IV. Effective Date

An organizer or a seller must maintain a list with respect to any interest acquired by an investor in a potentially abusive tax shelter after February 28, 2000. If a transaction becomes a potentially abusive tax shelter after interests are acquired by investors, an organizer or a seller must maintain a list with respect to any interest in the transaction acquired after the transaction becomes a potentially abusive tax shelter. Additionally, the IRS will not ask to inspect any list for a potentially abusive tax shelter, other than a tax shelter described in section 6111(c), until August 29, 2000. The lists required by the preceding two sentences with regard to interests acquired in potentially abusive tax shelters must contain the information required by A–17 of this section as it relates to such interests. The rules that apply with respect to interests acquired in potentially abusive tax shelters on or before February 28, 2000, are contained in 26 CFR part 301 revised as of April 1, 1999.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that persons responsible for maintaining the investor lists described in the regulations are principally large publicly traded corporations and the burden is not significant, as described in the preamble. 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, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

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

Section 301.6112–1T also issued under 26 U.S.C. 6112.* * *

Par. 2. Section 301.6112–1T is amended as follows:

1. The last sentence of A–3 is revised.
2. A–4 is revised.
3. Two sentences are added at the end of A–5.
4. A sentence is added at the end of A–7.
5. Paragraph (c) of A–8 is revised.
6. The first sentence of A–9 is removed, and two new sentences are added in its place.
7. The second sentence of the introductory text of A–11 is revised.
8. Paragraphs (a) and (b) of A–13 are revised.
9. A–14 is revised.
10. The first sentence of the introductory text of A–15 is revised.
11. A–17 is revised.
12. Two sentences are added at the end of A–18.
13. A–22 is revised.

The additions and revisions read as follows:

§ 301.6112–1T Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters (temporary).

* * * * *

A–3. * * * See § 301.6111–1T for rules relating to tax shelter registration and § 301.6111–2T for rules relating to confidential corporate tax shelter registration.

* * * * *

A–4. (a) Yes. For purposes of the list requirement, a tax shelter includes any tax shelter that is a projected income investment, as defined in A–57A of § 301.6111–1T, and any transaction a significant purpose of the structure of which is the avoidance or evasion of Federal income tax within the meaning of section 6111(d)(1)(A) and § 301.6111–2T(b). For this purpose, as under § 301.6111–2T, the term *transaction* includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

(b) Section 301.6111–2T provides a procedure for obtaining rulings as to whether a transaction is subject to registration under § 301.6111–2T. The same procedure shall be available to a person who is uncertain whether a transaction constitutes a tax shelter for which a list must be maintained under this section. The requirement to make a list which contains the information required by this section available for inspection by the Secretary shall be suspended during the period that such ruling request is pending and for sixty days thereafter; however, if it is ultimately determined that the transaction is a tax shelter, the pendency of such a ruling request shall not affect the requirement to maintain the list or limit the participants required to be included on the list or the other information required to be included as part of the list.

* * * * *

A–5. * * * An organizer also includes a promoter described in section 6111(d)(2). Under section 6111(d)(2), a promoter is any person who participates in the organization, management, or sale of the tax shelter or any related person (within the meaning of section 267 or 707).

* * * * *

A–7. * * * In addition, in any case in which a person has directly or indirectly paid consideration to an organizer or seller for the right to participate in a tax shelter, for services necessary to the organization or structure of such tax shelter, or for information that is integral to participation in such tax shelter, the participant shall be considered to have acquired an interest in the tax shelter and to have been sold an interest in the tax shelter by the organizer or seller.

* * * * *

A–8. * * * (c) Any transfer of an interest made by or through a person related (as defined in section 465(b)(3)(C)) to the organizer or the tax shelter (provided the organizer is involved in the tax shelter on the date of the transfer);

* * * * *

A–9. An organizer has a duty to make a reasonable inquiry only with respect to transfers of interests in the tax shelter made by a seller described in paragraph (a) of A–6 of this section who acquired the interests from the organizer or a person related (as defined in section 465(b)(3)(C)) to the organizer, or the tax shelter or a person related (as defined in section 465(b)(3)(C)) to the tax shelter (provided the organizer is involved in the tax shelter on the date the interest is transferred to the seller). See Q&A–8 of this section. * * *

* * * * *

A–11. * * * Organizers and sellers may not designate one person to maintain a list for the tax shelter, however, unless the tax shelter is timely and properly registered under section 6111 or unless the tax shelter is described in Q&A–4 of this section. * * *

* * * * *

A–13. (a) If the tax shelter is required to be registered under section 6111 at the time an agreement under A–12 of this section is signed, a seller or an organizer who signs the agreement shall not be subject to penalty under section 6708 for failing to maintain a list provided that the seller or organizer—

(1) Submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A–8, A–10, and A–17 of this section); and

(2) Provides to each investor (within the meaning of paragraph (c) of A–6 of this section) otherwise required to be included on a list maintained by such organizer or seller a notice in the form prescribed in paragraph (c) of this A–13.

(b) If the tax shelter is described in A–4 of this section at the time an agreement under A–12 of this section is signed, a seller or an organizer who signs the agreement shall not be subject to penalty under section 6708 for failing to maintain a list provided that the seller or organizer submits to the designated person all of the information that the organizer or seller otherwise would be required to maintain on a list (as described in A–8, A–10, and A–17 of this section). If the tax shelter ceases to be a projected income investment

under A–57G of § 301.6111–1T, or the tax shelter becomes subject to the registration requirements under section 6111, the designated person must provide to each investor (within the meaning of paragraph (c) of A–6 of this section) required to be included on the list an explanation that the tax shelter has ceased to be projected income investment or that the tax shelter is subject to the registration requirements of section 6111, whichever applies, and a notice substantially in the form prescribed in paragraph (c) of this A–13.

* * * * *

A–14. Yes. Any seller described in paragraph (a) of A–6 of this section who does not sign a designation agreement under A–12 of this section (including organizers who are such sellers) with respect to a tax shelter that is required to be registered under section 6111 must provide a notice to all investors (within the meaning of paragraph (c) of A–6 of this section) who acquire interests in the tax shelter from the seller. The notice must be substantially in the form prescribed in paragraph (c) of A–13 of this section except that the notice must include the name and address of the designated person. In the case of a tax shelter described in A–4 of this section, a notice to investors need not be provided until such time, if any, as the tax shelter ceases to be a projected income investment under A–57G of § 301.6111–1T, or the tax shelter becomes subject to the registration requirements under section 6111. In such a case, the seller shall provide, with the notice, an explanation that the tax shelter has ceased to be a projected income investment, or that the tax shelter has otherwise become subject to the registration requirements under section 6111, whichever applies.

* * * * *

A–15. An investor who retransfers an interest in a tax shelter that is described in A–4 of this section, is not required to maintain a list with respect to the retransfer unless prior to the retransfer the tax shelter ceases to be a projected income investment under A–57G of § 301.6111–1T or otherwise becomes subject to the registration requirements under section 6111.

* * * * *

A–17. (a) A list must contain the following information—

(1) The name of the tax shelter and the registration number, if any, obtained under section 6111;

(2) The TIN (as defined in section 7701(a)(41)), if any, of the tax shelter;

(3) The name, address, and TIN (as defined in section 7701(a)(41)) of each person who is required to be included on the list under A–8 or A–10 of this section and, in the case of a tax shelter that is a transaction described in section 6111(d)(1)(A) and § 301.6111–2T(b), the name, address, and TIN of any indirect corporate participant in the shelter if known to the organizer or seller;

(4) If applicable, the number of units (*i.e.,* percentage of profits, number of shares, etc.) acquired by each person who is required to be included on the list;

(5) The date on which each interest was acquired;

(6) The amount of money invested in the tax shelter by each person required to be included on the list under A–8 or A–10 of this section;

(7) A detailed description of the tax shelter that describes both the structure of the tax shelter and the intended tax benefits for participants in the tax shelter;

(8) A summary or schedule of the tax benefits that each person is intended or expected to derive from participation in the tax shelter, if known by the organizer or seller;

(9) Copies of any additional written materials, including tax analyses or opinions, relating to the tax shelter that have been given to any potential participants in the tax shelter or to any representatives, tax advisors, or agents of such potential participants by the organizer or seller or by any other person who has participated in the offering of the tax shelter (excluding any written materials that the organizer or seller has never possessed);

(10) If the interest was not acquired from the person maintaining the list, the name of the person from whom the interest was acquired; and

(11) The name and address of each agent of the person maintaining the list who is described in paragraph (b) of A–6 of this section.

(b) In any case in which an organizer or a seller of a potentially abusive tax shelter believes that information required to be maintained as part of the list for that tax shelter is protected by the attorney-client privilege or constitutes confidential tax advice protected under section 7525(a), such information may be withheld from disclosure to the Service, provided that the organizer or seller provides the Service with a statement signed under penalties of perjury with information and representations required in that statement that are the same as those required by § 301.6111–2T if the promoter of a confidential corporate tax shelter asserts that information required to be included with Form 8264, ''Application for Registration of a Tax Shelter,'' is privileged.

* * * * *

A–18. * * * Interests in substantially similar tax shelter transactions that are sold to different persons generally are to be treated as interests in the same tax shelter for purposes of this section. Further, the list for each tax shelter must identify each other tax shelter (if any) that the organizer or seller has offered that has not been treated as part of the same tax shelter, but that utilizes a similar structure or is intended to produce similar tax benefits.

* * * * *

A–22. An organizer or seller must maintain a list with respect to any interest acquired by an investor (within the meaning of paragraph (c) of A–6 of this section) in a potentially abusive tax shelter after February 28, 2000. If a transaction becomes a potentially abusive tax shelter after interests are acquired by investors, an organizer or a seller must maintain a list with respect to any interest in the transaction acquired after the transaction becomes a potentially abusive tax shelter. Additionally, the Internal Revenue Service will not ask to inspect any list for a potentially abusive tax shelter, other than a tax shelter described in section 6111(c), until August 29, 2000. The lists required by the preceding two sentences with regard to interests acquired in potentially abusive tax shelters must contain the information required by A–17 of this section as it relates to such interests. The rules that apply with respect to interests acquired in potentially abusive tax shelters acquired on or before February 28, 2000, are contained in 26 CFR part 301 revised as of April 1, 1999.

Par. 3. In § 602.101, paragraph (b) is amended by revising the entry for § 301.6112–1T to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

* * * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6112–1T	1545–0865 1545–1686
* * * * *	

Approved: February 23, 2000.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–4846 Filed 2–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8876]

RIN 1545–AX83

Corporate Tax Shelter Registration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring the registration of confidential corporate tax shelters pursuant to section 6111(d) as amended by section 1028(a) of the Taxpayer Relief Act of 1997 (the Act). The temporary regulations affect persons responsible for registering confidential corporate tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–110311–98 published elsewhere in this issue of the **Federal Register**.

DATES: *Effective date.* These temporary regulations are effective February 28, 2000.

Applicability date. For dates of applicability, see § 301.6111–2T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Richard Castanon, (202) 622–3080, or Mary Beth Collins, (202) 622–3070; concerning international issues Rebecca Rosenberg, (202) 622–3870 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1687. Responses to these collections of information are mandatory.

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

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

In enacting section 6111(d), Congress added confidential corporate tax shelters as a type of tax shelter that must be registered under section 6111. Congress intended the provision to improve tax compliance by giving the Treasury Department earlier notification of transactions that may not comport with Federal tax law and by discouraging taxpayers from entering into questionable transactions. See H.R. Rep. No. 148, 105th Cong., 1st Sess. 469 (1997); S. Rep. No. 33, 105th Cong., 1st Sess. 148 (1997).

Section 1028(e)(1) of the Act provides that the registration requirements of section 6111 and the penalty provisions of section 6707 for failing to comply with the registration requirements apply to confidential corporate tax shelters in which interests are offered to potential participants after the IRS issues guidance on the registration requirements. These regulations provide the guidance necessary to activate the registration requirements of section 6111 and the penalty provisions of section 6707 for confidential corporate tax shelters.

These temporary regulations relate to disclosure obligations for tax shelter organizers and promoters under section 6111. Although the terms of section 6111(d)(1)(A), which are part of the definition of a confidential corporate tax shelter, are similar to the definition of tax shelter under section 6662(d)(2)(C)(iii), these temporary regulations are not intended to define a tax shelter for purposes of section 6662, which relates to the imposition of penalties.

Explanation of Provisions

I. In General

Under section 6111(d)(1) and the temporary regulations, a confidential corporate tax shelter is any entity, plan, arrangement, or transaction that satisfies the following three requirements: (1) A significant purpose of the structure of the transaction is the avoidance or evasion of Federal income tax for a direct or an indirect corporate participant; (2) the transaction is offered to any potential participant under conditions of confidentiality; and (3) the tax shelter promoters may receive fees in excess of $100,000 in the aggregate.

II. Significant Purpose of Tax Avoidance or Tax Evasion

Under the temporary regulations, there are three categories of transactions for which the avoidance or evasion of Federal income tax is considered a significant purpose of the structure of the transaction.

First, the avoidance or evasion of Federal income tax is considered a significant purpose of the structure of a transaction if the transaction is the same as or substantially similar to one of the specified types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of section 6111.

Second, the avoidance or evasion of Federal income tax is generally considered a significant purpose of the structure of a transaction if the present value of the participant's reasonably expected pre-tax profit (after taking into account foreign taxes as expenses and transaction costs) from the transaction is insignificant relative to the present value of the participant's expected net Federal income tax savings from the transaction. However, if the substance of the transaction is the borrowing of money or the acquisition of financial capital by a corporate participant, the transaction falls within this second category if the present value of the Federal income tax deductions of the taxpayer to whom the loan or financial capital is provided significantly exceeds the present value of the pre-tax return of the person providing the loan or financial capital.

Third, the avoidance or evasion of Federal income tax is generally considered to be a significant purpose of the structure of a transaction if the transaction has been structured to produce Federal income tax benefits that constitute an important part of the intended results of the transaction and the tax shelter promoter (or other person

who would be responsible for registration under this section) reasonably expects the transaction to be presented (in the same or substantially similar form) to more than one potential participant. However, a transaction does not come within this third category if the promoter reasonably determines that the potential participant is expected to participate in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the promoter reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Code for substantially similar transactions.

Except for listed transactions, the avoidance or evasion of Federal income tax will not be considered a significant purpose of the structure of a transaction if the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction.

The IRS may make a determination, by published guidance, individual ruling, or otherwise, that a transaction is not required to be registered under the temporary regulations. If a tax shelter promoter (or other person who would be responsible for registration under this section) is uncertain whether a transaction is properly classified as a confidential corporate tax shelter or is otherwise uncertain whether registration is required under this section, that person may, on or before the date that registration would otherwise be required under this section, submit a request to the IRS for a ruling as to whether the transaction is subject to the registration requirements of this section. If the request fully discloses all relevant facts relating to the transaction, that person's potential obligation to register the transaction will be suspended during the period that the ruling request is pending and, if the Service subsequently concludes that the transaction is a confidential corporate tax shelter subject to registration under this section, until the sixtieth day after the issuance of the ruling (or, if the request is withdrawn, sixty days from the date that the request is withdrawn). In the alternative, that person may register the transaction in accordance with the requirements of this section and append a statement to the Form 8264, ''Application for Registration of a Tax Shelter,'' which states that the person is uncertain whether the transaction is required to be registered as a confidential corporate tax shelter, and that the Form 8264 is being filed on a protective basis.

III. Conditions of Confidentiality

Section 6111(d)(2) describes when an offer is made under conditions of confidentiality. The determination of whether an offer is made under conditions of confidentiality is based on all the facts and circumstances surrounding the offer, including prior conduct of the parties. If an offeree's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of a tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. An offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know the transaction is protected from disclosure or use in any other manner, such as where the transaction is claimed to be proprietary to the tax shelter promoter or any party other than the offeree. An offeree's privilege to maintain the confidentiality of a communication relating to a tax shelter in which the taxpayer might participate or has agreed to participate, including an offeree's confidential communication with the offeree's attorney, is not itself a condition of confidentiality.

The temporary regulations provide that, unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter enters into a written agreement with each person who participates or discusses participation in the transaction and such agreement expressly authorizes such persons to disclose every aspect of the transaction to any and all persons, without limitation of any kind.

IV. Fees

The third requirement that must be satisfied for a transaction to be treated as a confidential corporate tax shelter is that the tax shelter promoters, whether or not related, may receive fees in excess of $100,000 in the aggregate. In determining whether the tax shelter promoters may receive fees in excess of $100,000, all the facts and circumstances surrounding the transaction are considered. For this purpose, all consideration that may be received by the tax shelter promoters is taken into account, including contingent fees, fees in the form of equity interests, and fees the promoters may receive for other transactions as consideration for promoting the tax shelter.

For example, if a tax shelter promoter may receive a fee for arranging a transaction that is a confidential corporate tax shelter and/or a separate fee for another transaction that is not a confidential corporate tax shelter, part or all of the fee paid with respect to the other transaction may be treated as a fee paid with respect to the confidential corporate tax shelter if the facts and circumstances indicate that the fee paid for the other transaction is in consideration for the confidential corporate tax shelter. For purposes of determining whether the tax shelter promoters may receive fees in excess of $100,000, the fees from all substantially similar transactions are considered part of the same tax shelter and must be aggregated.

V. Registration Requirements

To register a confidential corporate tax shelter, the person responsible for registering the tax shelter must file Form 8264, ''Application for Registration of a Tax Shelter.'' (Form 8264 is also used to register tax shelters defined in section 6111(c).) The exemptions from the registration requirements contained in the instructions to the current Form 8264 apply only to tax shelters defined in section 6111(c). Form 8264 will be revised and will include specific requirements and instructions for registering confidential corporate tax shelters. Until that time, persons responsible for registering confidential corporate tax shelters should follow the registration procedures outlined in these regulations.

The temporary regulations provide that the person registering a confidential corporate tax shelter must provide a detailed description of the tax shelter, including the structure of the tax shelter and the tax benefits. Any written materials presented in connection with an offer to participate in the shelter are required to be submitted with the registration form.

Consistent with the registration requirements for tax shelters defined in section 6111(c), the temporary regulations provide that any transactions involving similar business assets or similar plans or arrangements that are offered to corporate taxpayers by the same person or by related persons are aggregated and treated as a single tax shelter. However, in contrast with the registration requirements

applicable to tax shelters defined in section 6111(c), the temporary regulations allow the tax shelter promoter to file a single Form 8264 with respect to any such aggregated tax shelter, provided an amended Form 8264 is filed to reflect any material changes and to include any additional or revised written materials presented in connection with an offer to participate in the shelter. Furthermore, the temporary regulations require all transactions that are part of the same tax shelter and that are to be carried out by the same corporate participant (or one or more other members of the same affiliated group within the meaning of section 1504) to be registered on the same Form 8264.

The temporary regulations provide that in cases in which an attorney or federally authorized tax practitioner acts as a tax shelter promoter with respect to a client's participation in a confidential corporate tax shelter and believes that information which would otherwise be required to be disclosed on Form 8264 is protected by the common law attorney-client privilege or the confidentiality privilege under section 7525(a), such promoter may omit the information believed to be privileged from Form 8264 if the promoter attaches a statement to the Form 8264 as described in these temporary regulations.

Section 6111(a)(1) requires a tax shelter to be registered not later than the day on which the first offering for sale of interests in such shelter occurs. Section 6111(d)(4) provides that an offer to participate in a confidential corporate tax shelter shall be treated as an offer for sale.

Registration under these temporary regulations will be limited to confidential corporate tax shelters that are offered for sale after February 28, 2000. If interests in a confidential corporate tax shelter were first offered for sale on or before February 28, 2000, the first offer for sale of interests in the shelter that occurs after February 28, 2000 shall be considered the first offer for sale under this section. The temporary regulations provide that the IRS will consider a registration as timely made for a confidential corporate tax shelter in which interests are offered for sale after February 28, 2000 if the confidential corporate tax shelter is registered no later than August 29, 2000.

If a transaction becomes a confidential corporate tax shelter (*e.g.,* because of a change in the law or factual circumstances, or because the transaction becomes a listed transaction) subsequent to the first offering for sale after February 28, 2000, and the transaction was not previously required to be registered as a confidential corporate tax shelter under this section, the transaction must be registered under this section if interests are offered for sale after the transaction becomes a confidential corporate tax shelter. The transaction must be registered by the later of the next offering for sale of interests in the shelter or August 29, 2000. However, because transactions identified as listed transactions are generally considered to have been structured for a significant tax avoidance purpose, such transactions ordinarily will have been subject to registration under this section before becoming listed transactions.

The temporary regulations provide that if an interest in a confidential corporate tax shelter is first offered for sale after February 28, 2000 and that shelter is also a tax shelter under section 6111(c), the person responsible for registering the shelter may either (1) complete and file Form 8264, including the information required by these temporary regulations for confidential corporate tax shelters, not later than the day on which an interest in the shelter is first offered for sale after February 28, 2000, or (2) complete and file Form 8264 for the section 6111(c) tax shelter not later than the day on which an interest in the tax shelter is first offered for sale under section 6111(a) and then file an amended Form 8264 with the information required by these temporary regulations not later than August 29, 2000.

VI. Tax Shelter Promoter and Person Required to Register

The temporary regulations provide that the term ''tax shelter promoter'' as described in section 6111(d)(2) includes a tax shelter organizer under section 6111(e)(1) and § 301.6111–1T(Q&A–26 through Q&A–32) and any other person who participates in the organization, management or sale of a tax shelter (other than a person who merely performs services of the kind described in Q&A–33 of § 301.6111–1T) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person.

In addition to the registration rules in section 6111, the rules in § 301.6111–1T(Q&A–34 through Q&A–39) apply for determining who must register a confidential corporate tax shelter.

The temporary regulations specify that, if all of the tax shelter promoters of a confidential corporate tax shelter are foreign persons and none of such promoters registers the shelter, any person who discusses participation in the shelter must register the shelter under section 6111(a). Pursuant to the authority in section 6111(f)(4), under limited circumstances, the temporary regulations apply to foreign as well as United States persons. For example, a foreign corporation that participates in a tax shelter with a significant purpose of reducing its United States taxes would be required to register the tax shelter if there were no U.S. promoters and the other requirements of the temporary regulations were satisfied.

Under the temporary regulations, if all the tax shelter promoters of a confidential corporate tax shelter are foreign persons, any person who discusses participation in the confidential corporate tax shelter with a tax shelter promoter must register the shelter within 90 days of beginning such discussions unless one or more of the following occurs: (1) the person does not participate in the shelter and notifies the promoter in writing, within the 90-day period, that the person will not participate; or (2) within the 90-day period, the person obtains and reasonably relies on both a written statement from one of the tax shelter promoters that such promoter has registered the tax shelter under this section and a copy of the registration.

To prevent avoidance of the purposes of section 6111(d)(3), the temporary regulations treat any person that participates in a shelter as having discussed that participation. Such discussion will be treated as occurring on the date of the agreement to participate or, if earlier, any other date the person is treated as having discussed participation under any other provision of these regulations. Thus, the participant is treated as having discussed participation in the shelter even if the agreement to participate is made without direct discussions by the participant. This might occur, for example, if participation is agreed to through an intermediary acting on the participant's behalf.

The temporary regulations also state that a person (first person) will be treated as participating indirectly in (and therefore as discussing) a tax shelter if a foreign person in which the first person has at least a 10 percent interest participates in the shelter with a significant purpose of avoiding or evading the first person's Federal income tax. For example, if a foreign corporation participates in a confidential corporate tax shelter with a significant purpose of reducing its 10 percent corporate shareholder's Federal income taxes, the temporary regulations would require the shareholder to register the tax shelter if all promoters are foreign.

For purposes of the registration requirements under section 6111(d)(3), it is presumed that the tax shelter promoters may receive fees in excess of $100,000 in the aggregate unless the person who would be responsible for registering the tax shelter can show otherwise.

VII. Investor List Requirement of Section 6112

Any person who organizes or sells an interest in a confidential corporate tax shelter must maintain a list of persons who were sold an interest in the tax shelter and such other information as required by section 6112. See § 301.6112–1T. Amendments to the temporary regulations under section 6112 have been published concurrently with the temporary regulations under section 6111(d). Among other things, the amended temporary regulations under section 6112 require lists to be maintained with respect to transactions for which the avoidance or evasion of Federal income tax is considered to be a significant purpose of the structure of the transaction, as determined in these temporary regulations under section 6111(d)(1)(A), whether or not the transactions are offered under conditions of confidentiality.

VIII. Effective Date

The regulations apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for promoting and registering the transactions described in these regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. 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, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Chief Counsel (Passthroughs and Special Industries) and Rebecca Rosenberg, Office of Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

Section 301.6111–2T also issued under 26 U.S.C. 6111(f)(4). * * *

Par. 2. Section 301.6111–2T is added to read as follows:

§ 301.6111–2T Confidential corporate tax shelters (Temporary).

(a) *In general*—(1) Under section 6111(d) and this section, a confidential corporate tax shelter is treated as a tax shelter subject to the requirements of sections 6111(a) and (b).

(2) A confidential corporate tax shelter is any transaction—

(i) A significant purpose of the structure of which is the avoidance or evasion of Federal income tax, as described in paragraph (b) of this section, for a direct or indirect corporate participant;

(ii) That is offered to any potential participant under conditions of confidentiality, as described in paragraph (c) of this section; and

(iii) For which the tax shelter promoters may receive fees in excess of $100,000 in the aggregate, as described in paragraph (d) of this section.

(3) For purposes of this section, references to the term *transaction* include all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

(4) A transaction described in paragraph (b) of this section is for a direct or an indirect corporate participant if it is expected to provide Federal income tax benefits to any corporation (U.S. or foreign) whether or not that corporation participates directly in the transaction.

(b) *Transactions structured for avoidance or evasion of Federal income tax*—(1) *In general.* The avoidance or evasion of Federal income tax will be considered a significant purpose of the structure of a transaction if the transaction is described in paragraph (b)(2), (3), or (4) of this section. However, a transaction described in paragraph (b)(3) or (4) of this section need not be registered if the transaction is described in paragraph (b)(5) of this section. For purposes of this section, Federal income tax benefits include deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit.

(2) *Listed transactions.* A transaction is described in this paragraph (b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction for purposes of section 6111. If a transaction becomes a listed transaction after the date on which registration would otherwise be required under this section, and if the transaction otherwise satisfies the confidentiality and fee requirements of paragraphs (a)(2)(ii) and (iii) of this section, registration shall in all events be required with respect to any interests in the transaction that are offered for sale after the transaction becomes a listed transaction. However, because a transaction identified as a listed transaction is generally considered to have been structured for a significant tax avoidance purpose, such a transaction ordinarily will have been subject to registration under this section before becoming a listed transaction if the transaction previously satisfied the confidentiality and fee requirements of

paragraphs (a)(2)(ii) and (iii) of this section.

(3) *Transactions lacking economic substance*—(i) Except as provided in paragraph (b)(3)(ii) of this section, a transaction is described in this paragraph (b)(3) if the present value of the participant's reasonably expected pre-tax profit (after taking into account foreign taxes as expenses and transaction costs) from the transaction is insignificant relative to the present value of the participant's expected net Federal income tax savings from the transaction.

(ii) If the substance of the transaction is the borrowing of money or the acquisition of financial capital by a corporate participant, the transaction is described in this paragraph (b)(3) only if the present value of the Federal income tax deductions of the taxpayer to whom the loan or financial capital is provided significantly exceeds the present value of the pre-tax return of the person providing the loan or financial capital.

(4) *Other tax-structured transactions.* A transaction is described in this paragraph (b)(4) if it has been structured to produce Federal income tax benefits that constitute an important part of the intended results of the transaction and the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably expects the transaction to be presented in the same or substantially similar form to more than one potential participant, unless the promoter reasonably determines that—

(i) The potential participant is expected to participate in the transaction in the ordinary course of its business (including transactions described in § 1.6011–4T(b)(3)(iii)) in a form consistent with customary commercial practice; and

(ii) There is a long-standing and generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are allowable under the Internal Revenue Code for substantially similar transactions.

(5) *Excepted transactions.* The avoidance or evasion of Federal income tax will not be considered a significant purpose of the structure of a transaction if the transaction is described in either paragraph (b)(5)(i) or (ii) of this section.

(i) In the case of a transaction other than a transaction described in paragraph (b)(2) of this section, the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Such a determination must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, authoritative administrative guidance, and judicial decisions that establish principles of general application in the tax law (*e.g., Gregory* v. *Helvering*, 293 U.S. 465 (1935)).

(ii) The IRS makes a determination, by published guidance, individual ruling under paragraph (b)(6) of this section, or otherwise, that the transaction is not subject to the registration requirements of this section.

(6) *Requests for ruling.* If a tax shelter promoter (or other person who would be responsible for registration under this section) is uncertain whether a transaction is properly classified as a confidential corporate tax shelter or is otherwise uncertain whether registration is required under this section, that person may, on or before the date that registration would otherwise be required under this section, submit a request to the IRS for a ruling as to whether the transaction is subject to the registration requirements of this section. If the request fully discloses all relevant facts relating to the transaction, that person's potential obligation to register the transaction will be suspended during the period that the ruling request is pending and, if the IRS subsequently concludes that the transaction is a confidential corporate tax shelter subject to registration under this section, until the sixtieth day after the issuance of the ruling (or, if the request is withdrawn, sixty days from the date that the request is withdrawn). In the alternative, that person may register the transaction in accordance with the requirements of this section and append a statement to the Form 8264, ''Application for Registration of a Tax Shelter,'' which states that the person is uncertain whether the transaction is required to be registered as a confidential corporate tax shelter, and that the Form 8264 is being filed on a protective basis.

(7) *Examples.* The following examples illustrate the application of paragraphs (b)(1) through (b)(5) of this section. Assume, for purposes of these examples, that the transactions are not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions for purposes of section 6111 and thus are not described in paragraph (b)(2) of this section. The examples are as follows:

Example 1—(i) *Facts.* Promoter organizes a transaction between X, a U.S. corporation, and FC, a foreign entity that is not subject to Federal income tax. FC contributes cash to PRS, a partnership, in exchange for a 99 percent partnership interest in PRS. Promoter is initially the only other partner in PRS. FC will receive a market rate of return on its cash contribution and a fee for participating in the transaction. PRS purchases personal property and then leases it. PRS sells its right to the lease payments in exchange for cash. PRS allocates 99 percent of the income from the sale to FC and one percent to Promoter. PRS retains the leased property. Shortly after PRS's sale of the lease payments, X buys FC's 99 percent partnership interest in PRS. The depreciation deductions on the leased property are then allocated 99 percent to X and one percent to Promoter.

(ii) *Analysis.* The transaction is described in paragraph (b)(3)(i) of this section because the present value of X's reasonably expected pre-tax profit from the transaction is insignificant relative to the present value of X's expected net Federal income tax savings from the transaction. Therefore, unless Promoter can reasonably determine that the IRS would have no reasonable basis for denial of any significant portion of the Federal income tax benefits intended for X, the transaction is described in paragraph (b)(1) of this section.

Example 2—(i) *Facts.* Y has designed a combination of financial instruments to be issued as a package by corporations. The financial instruments are expected to be treated as equity for financial accounting purposes and as debt giving rise to allowable interest deductions for Federal income tax purposes. Y reasonably expects to present this method of raising capital to more than one potential corporate participant. Assume the transaction is not described in paragraph (b)(3) of this section. Assume that, because of the unusual nature of the combination of financial instruments, Y cannot conclude either that the transaction represented by the financial instruments is in customary commercial form or that there is a long-standing and generally accepted understanding that interest deductions are available to issuers of substantially similar combinations of financial instruments. Further, assume that Y cannot reasonably determine that the IRS would have no reasonable basis to deny the deductions.

(ii) *Analysis.* The transaction represented by this combination of financial instruments is a transaction described in paragraph (b)(4) of this section. However, if Y is uncertain whether this transaction is described in paragraph (b)(4) of this section, or is otherwise uncertain whether registration is required, Y may apply for a ruling under paragraph (b)(6) of this section, and the transaction will not be required to be registered while the ruling is pending or for sixty days thereafter.

(c) *Conditions of confidentiality*—(1) *In general.* All the facts and circumstances relating to the transaction will be considered when determining whether an offer is made under conditions of confidentiality as described in section 6111(d)(2), including prior conduct of the parties. Pursuant to section 6111(d)(2)(A), if an offeree's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of any tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. Pursuant to section 6111(d)(2)(B), an offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know that the transaction is protected from disclosure or use in any other manner, such as where the transaction is claimed to be proprietary to the tax shelter promoter or any party other than the offeree. An offeree's privilege to maintain the confidentiality of a communication relating to a tax shelter in which the taxpayer might participate or has agreed to participate, including an offeree's confidential communication with the offeree's attorney, is not itself a condition of confidentiality.

(2) *Presumption.* Unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter enters into a written agreement with each person who participates or discusses participation in the transaction and such agreement expressly authorizes such persons to disclose every aspect of the transaction with any and all persons, without limitation of any kind.

(d) *Determination of fees.* All the facts and circumstances relating to the transaction will be considered when determining the amount of fees, in the aggregate, that the tax shelter promoters may receive. For purposes of this paragraph (d), all consideration that tax shelter promoters may receive is taken into account, including contingent fees, fees in the form of equity interests, and fees the promoters may receive for other transactions as consideration for promoting the tax shelter. For example, if a tax shelter promoter may receive a fee for arranging a transaction that is a confidential corporate tax shelter and a separate fee for another transaction that is not a confidential corporate tax shelter, part or all of the fee paid with respect to the other transaction may be treated as a fee paid with respect to the confidential corporate tax shelter if the facts and circumstances indicate that the fee paid for the other transaction is in consideration for the confidential corporate tax shelter. For purposes of determining whether the tax shelter promoters may receive fees in excess of $100,000, the fees from all substantially similar transactions are considered part of the same tax shelter and must be aggregated.

(e) *Registration*—(1) *Time for registering*—(i) *In general.* A tax shelter must be registered not later than the day on which the first offering for sale of interests in the shelter occurs. An offer to participate in a confidential corporate tax shelter shall be treated as an offer for sale. If interests in a confidential corporate tax shelter were first offered for sale on or before February 28, 2000, the first offer for sale of interests in the shelter that occurs after February 28, 2000 shall be considered the first offer for sale under this section.

(ii) *Certain registrations deemed timely*—(A) *In general.* The IRS will consider a registration as timely made for a confidential corporate tax shelter in which interests are offered for sale after February 28, 2000, if the tax shelter is registered no later than August 29, 2000. If an interest in a confidential corporate tax shelter is first offered for sale after February 28, 2000 and the tax shelter also constitutes a tax shelter under section 6111(c), the persons responsible for registering the tax shelter may either complete and file Form 8264, ''Application for Registration of a Tax Shelter'', including the information required by paragraph (e)(2) of this section, not later than the day on which an interest in the tax shelter is first offered for sale after February 28, 2000, or complete and file Form 8264, ''Application for Registration of a Tax Shelter'', for the section 6111(c) tax shelter not later than the day on which an interest in the tax shelter is first offered for sale under section 6111(a) and then file an amended Form 8264 with the information required by paragraph (e)(2) of this section not later than August 29, 2000.

(B) *Special rule.* If a transaction becomes a confidential corporate tax shelter (e.g., because of a change in the law or factual circumstances, or because the transaction becomes a listed transaction) subsequent to the first offering for sale after February 28, 2000, and the transaction was not previously required to be registered as a confidential corporate tax shelter under this section, the transaction must be registered under this section if interests are offered for sale after the transaction becomes a confidential corporate tax shelter. The transaction must be registered by the later of the next offering for sale of interests in the shelter or August 29, 2000.

(2) *Procedures for registering*—(i) *In general.* To register a confidential corporate tax shelter, the person responsible for registering the tax shelter must file Form 8264, ''Application for Registration of a Tax Shelter''. (Form 8264 is also used to register tax shelters defined in section 6111(c).) The exemptions from the registration requirements contained in the instructions to the current Form 8264 apply only to tax shelters defined in section 6111(c). Similar to the treatment provided under Q&A–22 and Q&A–48 of § 301.6111–1T, transactions involving similar business assets and similar plans or arrangements that are offered to corporate taxpayers by the same person or related persons are aggregated and considered part of a single tax shelter. However, in contrast with the requirement of Q&A–48 of § 301.6111–1T, the tax shelter promoter may file a single Form 8264 with respect to any such aggregated tax shelter, provided an amended Form 8264 is filed to reflect any material changes and to include any additional or revised written materials presented in connection with an offer to participate in the shelter. Furthermore, all transactions that are part of the same tax shelter and that are to be carried out by the same corporate participant (or one or more other members of the same affiliated group within the meaning of section 1504) must be registered on the same Form 8264.

(ii) *Interim registration procedure.* Until Form 8264 and its instructions are revised to incorporate the provisions of this paragraph (e)(2)(ii), the person responsible for registering a confidential corporate tax shelter must—

(A) Type or legibly print ''Confidential Corporate Tax Shelter Filed Under § 301.6111–2T'' at the top of Form 8264 (Rev. 11–99), ''Application for Registration of a Tax Shelter'';

(B) Complete Part I and lines 1a, 2, 3, 4, 6, and 12 in Part II of Form 8264;

(C) In the section titled ''Explanation of Items'' on Form 8264, provide a detailed description of the tax shelter, including a description of the structure of the tax shelter and the intended tax benefits;

(D) Attach any written materials that are presented to potential participants in connection with the offering of sales of interests in the tax shelter, including

any analyses or opinions relating to the intended tax benefits of the shelter; and

(E) Sign the Form 8264 and send it to the Internal Revenue Service Center, Kansas City, MO 64999.

(iii) *Use of subsequent versions of Form 8264.* If a person who is required to register a confidential corporate tax shelter under section 6111 uses a subsequent version of the Form 8264, the person must complete the appropriate parts of the revised form and follow the applicable instructions.

(iv) *Tax shelters that constitute both section 6111(c) and section 6111(d) tax shelters.* If a person is registering an arrangement that is both a confidential corporate tax shelter and a section 6111(c) tax shelter, the person must follow the requirements of this section and the instructions for Form 8264. In such a situation, the taxpayer must complete the entire form because the tax shelter is a section 6111(c) tax shelter and, if using Form 8264 (Rev. 11–99), type or legibly print ''Confidential Corporate Tax Shelter filed under § 301.6111–2T'' at the top of Form 8264 and include the information required in paragraphs (e)(2)(ii)(C) and (D) of this section because the tax shelter is also a confidential corporate tax shelter. If an arrangement is both a section 6111(c) tax shelter and a confidential corporate tax shelter and is a transaction described in the ''Exemptions from Registration'' section of the instructions for Form 8264 (Rev. 11–99), the person registering the arrangement must comply with the requirements of this section to register the arrangement as a confidential corporate tax shelter.

(3) *Claims of privilege.* (i) In any case in which an attorney or federally authorized tax practitioner within the meaning of section 7525 is the person required to register a confidential corporate tax shelter, and that person believes that information required to be disclosed under paragraph (e)(2) of this section is protected by the attorney-client privilege or by the confidentiality privilege of section 7525(a), any information omitted from the Form 8264 on the basis of such a claim must be supported by a statement attached to Form 8264 which satisfies the requirements set forth in paragraph (e)(3)(ii) of this section.

(ii) A statement supporting a claim of privilege must be signed by the attorney or federally authorized tax practitioner under penalties of perjury, must identify each document or category of information for which a claim of privilege is made, and must include the following representations with respect to each document or category of information for which the privilege is claimed—

(A) Specifically represent that the information was a confidential practitioner-client communication and, in the case of information which a federally authorized tax practitioner claims is privileged under section 7525, that the omitted information was not part of tax advice that constituted the promotion of a tax shelter within the meaning of section 7525(b);

(B) Specifically represent that the person required to register (and, to the best of such person's knowledge and belief, all others in possession of the omitted information) did not disclose the omitted information to any person whose receipt of such information would result in a waiver of the privilege.

(f) *Definition of tax shelter promoter.* For purposes of section 6111(d)(2) and this section, the term ''tax shelter promoter'' includes a tax shelter organizer as defined in section 6111(e)(1) and § 301.6111–1T(Q&A–26 through Q&A–32) and any other person who participates in the organization, management or sale of a tax shelter (other than a person who merely performs services of the kind described in Q&A–33 of § 301.6111–1T) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person. Any person that satisfies this requirement must comply with the requirements under section 6112.

(g) *Person required to register*—(1) *Tax shelter promoters.* In addition to the rules in section 6111, taxpayers must use the rules of § 301.6111–1T (Q&A–34 through Q&A–39) in determining the circumstances under which a tax shelter promoter must register a confidential corporate tax shelter described in section 6111(d).

(2) *Persons who discuss the transaction; all promoters are foreign persons*—(i) *In general.* If all of the tax shelter promoters of a confidential corporate tax shelter are foreign persons, any person who discusses participation in the transaction must register the shelter under this section within 90 days after beginning such discussions.

(ii) *Exceptions.* Registration by a person discussing participation in a transaction is not required if either—

(A) The person does not participate, directly or indirectly, in the shelter and notifies the tax shelter promoter in writing, within 90 days of beginning such discussions, that the person will not participate; or

(B) Within 90 days after beginning such discussions, the person obtains and reasonably relies on both—

(*1*) A written statement from one of the tax shelter promoters that such promoter has registered the tax shelter under this section; and

(*2*) A copy of the registration.

(iii) *Determination of foreign status.* For purposes of this paragraph (g)(2), a person must presume that all tax shelter promoters are foreign persons unless the person either—

(A) Discusses participation in the tax shelter with a promoter that is a United States person; or

(B) Obtains and reasonably relies on a written statement from one of the promoters that at least one of the promoters is a United States person.

(iv) *Discussion.* Discussing participation in a transaction includes discussing such participation with any person that conveys the tax shelter promoter's proposal. For purposes of this paragraph (g)(2), any person that participates directly or indirectly in a transaction will be treated as having discussed participation in the transaction not later than the date of the agreement to participate. Thus, a tax shelter participant will be treated as having discussed participation in the transaction even if all discussions were conducted by an intermediary and the agreement to participate was made indirectly through another person acting on the participant's behalf (for example, through an intermediary empowered to commit the participant to participate in the shelter).

(v) *Special rule for controlled entities.* A person (first person) will be treated as participating indirectly in a confidential corporate tax shelter if a foreign person controlled by the first person participates in the shelter, and a significant purpose of the shelter is the avoidance or evasion of the first person's Federal income tax. For purposes of this paragraph (g)(2)(v), control of a foreign corporation or partnership will be determined under the rules of section 6038(e)(2) and (3), except that such section shall be applied by substituting ''10'' for ''50'' each place it appears and ''at least'' for ''more than'' each place it appears. In addition, section 6038(e)(2) shall be applied for these purposes without regard to the constructive ownership rules of section 318 and by treating stock as owned if it is owned directly or indirectly. Section 6038(e)(3) shall be applied for these purposes without regard to the last sentence of section 6038(e)(3)(B). Any beneficiary with a 10 percent or more interest in a foreign trust or estate shall be treated as controlling that trust or estate for purposes of this paragraph (g)(2)(v).

(vi) *Other rules*—(A) For purposes of the registration requirements under section 6111(d)(3), it is presumed that the tax shelter promoters will receive fees in excess of $100,000 in the aggregate unless the person responsible for registering the tax shelter can show otherwise.

(B) Any person treated as a tax shelter promoter under section 6111(d) solely by reason of being related (within the meaning of section 267 or 707) to a foreign promoter will be treated as a foreign promoter for purposes of this paragraph (g)(2).

(h) *Effective date*. This section applies to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. If an interest is sold after February 28, 2000, it is treated as offered for sale after February 28, 2000 unless the sale was pursuant to a written binding contract entered into on or before February 28, 2000.

Par. 3. In § 602.101, paragraph (b) is amended by adding an entry for § 301.6111–2T to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6111–2T	1545–0865 1545–1687
* * * * *	

Charles O. Rossotti,

Commissioner of Internal Revenue.

Approved: February 23, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–4844 Filed 2–28–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6542–9]

RIN 2060–AH10

Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The EPA is revising the nitrogen oxides (NO_X) statewide emissions budgets for the 22 States and the District of Columbia which are required to submit State implementation plan (SIP) revisions to address the regional transport of ozone (also referred to as the NO_X SIP call) (63 FR 57356, October 27, 1998). These revisions are mainly based on comments received for emissions inventory revisions to 2007 baseline information used to establish each State's budget during the comment periods for both the NO_X SIP call and the ''Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone'' which was published on May 14, 1999. Some revisions were made based on comments received after the comment periods but deemed to be technically justified.

EFFECTIVE DATE: This rule is effective April 3, 2000.

ADDRESSES: Dockets containing information relating to this rulemaking (Docket Nos. A–96–56, A–97–43, and A–98–12) are available for public inspection at the Office of Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M St., SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Docket materials may be sent by electronic mail to A-and-R-Docket@epa.gov. Documents related to this notice are available on EPA's website at http://www.epa.gov/ttn/oarpg/otagsip.html, and http://www.epa.gov/ttn/rto/.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's technical amendment should be addressed to Jan King, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5665; e-mail: king.jan@epa.gov. Specific questions on the revised NO_X emissions budgets should be directed to Gregory Stella, Office of Air Quality Planning and Standards, Emissions Monitoring and Analysis Division, MD–14, Research Triangle Park, NC 27711, telephone (919) 541–3649; e-mail: stella.greg@epa.gov. Specific questions on the electric generating unit (EGU) sector should be directed to Kevin Culligan, Office of Atmospheric Programs, Clean Air Markets Division, 401 M Street SW, 6204J, Washington, D.C., 20460, telephone (202) 564–9172; e-mail; culligan.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: By notice dated October 27, 1998, EPA published the final NO_X SIP call. The final NO_X SIP call provided the opportunity for comments on 2007 baseline sub-inventory revisions. If data submitted by commenters were determined to be technically justified, the State baseline inventory and budgets for the NO_X SIP call would be revised to include the new data. In response to the comments received during this comment period, revised baseline inventories and budgets were published in the May 14, 1999 technical amendment (64 FR 26298).

The EPA is proceeding to final action now on a second technical amendment based on further comments received from the public in response to the SIP call and the request for comments on inventory revisions as well as the May 14, 1999 technical amendment. The final NO_X SIP call required that the SIPs be submitted by September 30, 1999 and the controls be implemented by May 1, 2003. On May 25, 1999, the courts granted a stay on the SIP submittal date of September 30, 1999. However, we are moving forward with these corrections because some States are voluntarily submitting SIPs as soon as they can incorporate the new emissions inventory and statewide budget numbers. Also, today's changes are necessary to make the NO_X SIP Call inventory consistent with the inventory adopted when EPA granted Section 126 petitions on December 17, 1999. The NO_X SIP Call and the Section 126 petitions are to be based on the same inventory. To the extent relevant, the corrections contained in today's action have already been incorporated in the section 126 inventory.

To the extent the Administrative Procedure Act might require publication of an additional notice of proposed rulemaking for this action, EPA finds good cause to dispense with such a proposal. The EPA finds it would be contrary to the public interest, because a number of States are proceeding with revisions to their SIPs that are dependent upon finalization of these inventories. Any delay in finalizing these inventories would require States to delay submitting their SIP revisions and therefore could delay emissions reductions that would be realized as a result of these SIP revisions. Furthermore, EPA has already provided a sufficient opportunity for public comment on the inventory issues (5

U.S.C. 553(b)(B)) through the prior comment period on the SIP call and the first technical amendment.

I. Changes to the Inventory

Subsequent to the publication of the May 14, 1999 technical amendment revising the emission budgets for the NO_X SIP call, a number of commenters raised concerns about EPA's interpretation of their comments. In addition, new information was also submitted by commenters after May 14, 1999. Further, EPA conducted a thorough review of all the comments received regarding the May 14 technical amendment. This was done in an attempt to identify other mistakes made in incorporating the revision requests. The Agency modified the base inventories and budget calculations in areas where these reviews uncovered incorporation errors or where new data was found to be technically valid.

As part of the above review, EPA became aware of an error common to many stationary reciprocating internal combustion (IC) engines in several States. The error generally occurred because the permits issued to the sources used only one point and stack identification number for each of several engines located at one site; *i.e.,* individual engines at one site that were permitted together received the same identification number. Then, in calculating the total emissions from that source, the inventory resulted in identifying the source incorrectly as a large source instead of several small sources with separate emission points.

In some cases, this common error was noted by individual companies during the original comment period for the NO_X SIP call. In the process of making the corrections described above, EPA also made minor corrections to the IC engine inventory based on further discussions with the industry and where concurrence of the relevant State agency was obtained.

In addition, on August 9, 1999, (64 FR 43124) EPA issued a Notice of Data Availability seeking comment on heat input and electrical output data that could be used to allocate NO_X allowances under a Federal NO_X Budget Trading Program. EPA received a number of comments on that Notice that have also lead to review of earlier comments submitted by those commenters. In some cases this review has led to changes in the electricity generating unit (EGU) and non-electricity generating unit (non-EGU) portions of the budget.

II. Changes to Statewide Sub-Inventory Sector NO_X Emissions Budgets

Changes to the Statewide NO_X emissions budgets made in this technical amendment are mainly in response to the comments submitted during prior comment periods for the NO_X SIP call and the May 14, 1999 technical amendment. Each of the sub-inventory sectors of electricity generating unit (EGU), non-electricity generating unit(non-EGU) point, area, nonroad mobile, and highway mobile were commented on and affected to some extent by this EPA action. The changes made in each sub-inventory sector are further described below. The total emissions budget for all of the sub-inventory sectors decreased less than 1 percent from the May 14, 1999 technical amendment to this action.

As a result of these revisions, EPA anticipates that full implementation of the NO_X SIP call will reduce total NO_X emissions by 1.111 million tons in the 2007 ozone season. This is a slight decrease from the 1.157 million tons in total NO_X reductions identified in the final NO_X SIP call. The total overall percent reduction decreased slightly from 28 percent to 25 percent as a result of the smaller amount of emissions reductions and an increase in the emissions inventory baseline. Even though there was a slight increase in the overall NO_X emissions inventory, EPA expects that the impact on air quality benefits and cost effectiveness would be small because the emissions changes are minor.

The EGU source budgets increased by less than 1 percent from the final SIP call. A number of EGU point source units were reclassified to the non-EGU source sector and some non-EGU sources were reclassified to the EGU source sector. Further, in response to comments, the EGU budget also adds previously unidentified EGUs. Overall, the emissions reductions from this sector are similar to the emissions reductions of the final NO_X SIP call.

On September 15, 1999, EPA took a direct final rulemaking (64 FR 49987) action modifying the EGU portions of the budget for the States of Connecticut, Massachusetts and Rhode Island. On November 1, 1999, after receiving adverse comment, EPA withdrew that final action (64 FR 58792).

Therefore, today's action does not include the modifications to the budgets for those three States that were finalized on September 15, 1999. EPA is reviewing the comments received on that action and intends to address them in a future rulemaking action. As explained in the September 15, 1999 action, such an action would be a redistribution of the budget among the three States and would have no affect on the budget or compliance supplement pool for any other states.

The non-EGU source budgets increased by 13 percent from the final NO_X SIP call for several reasons. First, many sources were reclassified from large non-EGUs to small non-EGUs, thereby removing them from the category of non-EGU sources requiring budget level controls (*i.e.,* 30 percent reduction from large cement kilns, 60 percent reduction from large industrial boilers and large gas turbines, and 90 percent reduction from large IC engines). Second, some non-EGU units for which EPA assumed controls were reclassified to categories for which controls were not assumed; this reclassification results in excluding them from budget level controls (*e.g.,* large industrial boiler reclassified as a glass manufacturer). Many State and local agencies submitted revised non-EGU point source inventories which replaced their final NO_X SIP call inventory for non-EGUs. A number of non-EGU point source units were reclassified to the EGU source sector and a number of EGU sources were reclassified to the non-EGU source sector. The result of all of these reclassifications is that fewer non-EGUs would be subject to EPA's assumed control strategy. Finally, corrections to the growth rates of many non-EGU sources were made to reflect the growth misapplied in the May 14, 1999 version of the budget. Because the 2007 base budget increased, but the total number of units that would be subject to controls under EPA's assumed control strategy decreased, these changes lower the amount of emissions expected to be reduced by the NO_X SIP call by 44,072 tons.

Changes in the stationary area source budgets resulted in an increase of 10 percent from the final NO_X SIP call to that portion of the budget. Some State and local agencies submitted revised stationary area source inventories to replace their final NO_X SIP call inventory. In addition, EPA is applying a more consistent method for calculating ozone season emissions based on typical ozone season daily emissions. To retain consistency in State ozone season estimation methods, EPA is estimating seasonal emissions budgets by multiplying the typical ozone season day emission value by the number of days (153) in the ozone season. Since EPA does not apply any controls to this source sector in calculating the reductions for the final NO_X SIP call, there is no expected effect

on the overall reduction due to these changes.

Changes in the nonroad mobile source budget resulted in an overall increase of 15 percent to the nonroad mobile source budget from the nonroad source budget in the final NO_X SIP call. The EPA applied the same ozone season estimation methods change described above for stationary area sources to the nonroad mobile source budget. Several State and local agencies provided emissions growth and control data for use in estimating the nonroad sector of the budgets. Since EPA did not apply any controls to this source sector in calculating the reductions for the final NO_X SIP call, there is no expected affect on the overall reduction due to these changes.

Changes in the highway mobile source sector resulted in a 10 percent increase to the highway mobile source budget from the final NO_X SIP call budget. Differences in the highway sector of the State emissions budgets are in response to State and local agency comments on vehicle miles traveled (VMT), VMT growth, vehicle mix throughout the State, State-to-county level VMT allocations, speed changes by vehicle and roadway type, and inspection and maintenance program application, as well as EPA's inclusion of excess NO_X emissions from the use of ''defeat devices'' on highway heavy-duty diesel engines. This latter effect is discussed more fully in the following section. Since EPA did not apply any controls to this source sector in calculating the reductions for the final NO_X SIP call, there is no expected effect on the overall reduction due to these changes.

Neither overall size of the compliance supplement pool, nor the methodology for distributing the compliance supplement pool has changed as a result of this rulemaking. Consistent with the final SIP Call, EPA has distributed the compliance supplement pool based on a State's share of the overall emissions reductions required. Therefore, if the inventory revisions contained in this final rule resulted in a decrease in any State's share of the overall emission reductions required by the SIP call, then there is a corresponding decrease in that State's compliance supplement pool. Conversely, if any of the inventory revisions resulted in an increase in a State's share of the overall emissions reductions required, then the State would receive a larger share of the 200,000 ton compliance supplement pool.

III. Heavy-Duty Diesel Emission Estimates

The final NO_X budget numbers EPA is presenting today, include corrected estimates for the effects of excess NO_X emissions from highway heavy-duty diesel engines with ''defeat devices.'' These diesel engines use computer software that cause the effectiveness of the engines' emission control systems to be reduced. In essence, the computer software alters the fuel injection timing when the engine operates in certain modes (such as highway driving), causing the engine to emit higher levels of NO_X than indicated by their certification standards or by EPA's existing emission models. The EPA believes that the emissions impact of defeat devices peaked in the late 1990s and subsequently will decline rapidly as newer engines replace defeat device-equipped engines and as manufacturers undertake the mitigation commitments required under the consent decrees reached with the manufacturers of highway heavy-duty diesel engines equipped with defeat devices.

As of July 1, 1999, these consent decrees have become final. The consent decrees commit the manufacturers to reduce emissions from their engines and cease equipping them with defeat devices according to an agreed-upon schedule, and to take steps to mitigate the emissions effects of existing engines equipped with defeat devices. These mitigation commitments include the early introduction of heavy-duty diesel engines that will meet the more stringent NO_X standards scheduled to take effect in 2004, rebuilding existing diesel engines to meet more stringent standards, and accelerating the introduction of lower-emitting nonroad diesel engines. Additional information regarding the defeat device consent decrees can be found in ''Notices of Filing of Consent Decree under the Clean Air Act'' (63 FR 59330–59334, November 3, 1998). Additional information about defeat devices and their emissions effects can be obtained from the U.S. EPA's Office of Mobile Sources by contacting the Engine Compliance Programs Group at (202) 564–9240 and requesting document VPCD–98–13 (HD Engine), dated October 15, 1998.

In the May 14, 1999 technical amendment, EPA presented updated estimates of NO_X emissions from heavy-duty diesel engines that included the added emissions due to defeat devices and also accounted for the early introduction of engines that meet the 2004 highway heavy-duty diesel engine standards, as specified by the proposed consent decrees reached with the manufacturers of diesel engines equipped with these devices. Since the consent decrees became final, we have improved our estimates of the impact of defeat devices and the mitigation measures contained in the consent decrees. These improved estimates reflect the rebuild provisions of the consent decrees and more accurately account for the effects of defeat devices and the early introduction of engines meeting the 2004 standards. The final baseline NO_X emission projections and NO_X budgets presented in this notice include these improved estimates.

The EPA is including revised estimates of the effects of defeat devices in this technical amendment even though they were not available at the time of our proposal, for the final NO_X SIP call, or for the May 14, 1999 technical amendment (note that as explained above, the May 14, 1999 technical amendment did include the best estimates that EPA had at that time of the effect of the defeat devices). The EPA finds good cause to use this information without prior proposal. Comment would be unnecessary, since EPA will be including the effects of the defeat devices in both the calculation of the baseline inventories and the establishment of the SIP call budgets. Because the effects of the defeat devices will be included in both the baseline and the emission levels that must be achieved, inclusion of the effects will not alter the obligations that the affected States must meet to comply with the SIP call. The result of this change does not alter the tons of NO_X reductions that the States must achieve, nor does it change the type of controls States are expected to select to reduce NO_X emissions. This change will more accurately reflect EPA's current understanding of emissions from highway mobile sources and the provisions of the final consent decrees. Therefore, EPA finds good cause to include these effects in this final action.

As described above, including the emissions due to defeat devices in the statewide NO_X emissions budgets will not, by itself, alter the emissions reductions that will result from the final NO_X SIP call, because the change in baseline and budget amounts is identical. The change in NO_X budgets varies from State to State but averages approximately 3.5 percent across the entire 37-State Ozone Transport Assessment Group (OTAG) domain, which EPA believes approximates the increase in the States covered by the final NO_X SIP call. The EPA does not believe this change is sufficiently large to alter the conclusions regarding

significant contribution or estimates of the overall benefits of the rule, although it may alter the projected benefits of the rule in specific locations.

IV. Revised Statewide NO_X Emissions Budgets

The final percent reductions from the final October 1999 base year inventory to the final February 18, 2000 budget for each sub-inventory sector are shown in Tables 1–5. The February 18, 2000 final statewide emissions budgets are shown in Table 6. Table 7 shows the percent change between the statewide NO_X emissions budgets promulgated on May 14, 1999 and the revised final statewide NO_X emissions budgets of February 18, 2000. Table 8 shows each State's final compliance supplement pool.

TABLE 1.—FINAL NO_X BUDGET COMPONENTS AND PERCENT REDUCTION FOR ELECTRICITY GENERATING UNITS

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
Alabama	76,926	29,022	62
Connecticut	5,636	2,652	53
Delaware	5,838	5,250	10
District of Columbia	3	207	n/a
Georgia	86,455	30,402	65
Illinois	119,311	32,372	73
Indiana	136,773	47,731	65
Kentucky	107,829	36,503	66
Maryland	32,603	14,656	55
Massachusetts	16,479	15,146	8
Michigan	86,600	32,228	63
Missouri	82,097	24,216	71
New Jersey	18,352	10,250	44
New York	39,199	31,036	21
North Carolina	84,815	31,821	62
Ohio	163,132	48,990	70
Pennsylvania	123,102	47,469	61
Rhode Island	1,082	997	8
South Carolina	36,299	16,772	54
Tennessee	70,908	25,814	64
Virginia	40,884	17,187	58
West Virginia	115,490	26,859	77
Wisconsin	51,962	17,381	67
Total	1,501,775	544,961	64

TABLE 2.—FINAL NO_X BUDGET COMPONENTS AND PERCENT REDUCTION FOR NON-ELECTRICITY GENERATING POINT SOURCES

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
Alabama	60,465	43,415	28
Connecticut	5,397	5,216	3
Delaware	2,821	2,473	12
District of Columbia	300	282	6
Georgia	37,245	29,716	20
Illinois	70,948	59,577	16
Indiana	69,011	47,363	31
Kentucky	29,486	25,669	13
Maryland	16,216	12,585	22
Massachusetts	11,210	10,298	8
Michigan	68,801	60,055	13
Missouri	25,964	21,602	17
New Jersey	15,975	15,464	3
New York	32,678	25,477	22
North Carolina	33,114	26,434	20
Ohio	50,001	40,194	20
Pennsylvania	82,107	70,132	15
Rhode Island	1,635	1,635	0
South Carolina	37,960	27,787	27
Tennessee	53,262	39,636	26
Virginia	42,108	35,216	16

TABLE 2.—FINAL NO_X BUDGET COMPONENTS AND PERCENT REDUCTION FOR NON-ELECTRICITY GENERATING POINT SOURCES—Continued

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
West Virginia	24,473	20,238	17
Wisconsin	23,734	19,853	16
Total	794,911	640,317	19

TABLE 3.—FINAL NO_X BUDGET COMPONENTS FOR STATIONARY AREA SOURCES

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
Alabama	28,762	28,762	0
Connecticut	4,821	4,821	0
Delaware	1,129	1,129	0
District of Columbia	830	830	0
Georgia	13,212	13,212	0
Illinois	9,369	9,369	0
Indiana	29,070	29,070	0
Kentucky	31,807	31,807	0
Maryland	4,448	4,448	0
Massachusetts	11,048	11,048	0
Michigan	31,721	31,721	0
Missouri	7,341	7,341	0
New Jersey	12,431	12,431	0
New York	17,423	17,423	0
North Carolina	11,067	11,067	0
Ohio	21,860	21,860	0
Pennsylvania	17,842	17,842	0
Rhode Island	448	448	0
South Carolina	9,415	9,415	0
Tennessee	13,333	13,333	0
Virginia	27,738	27,738	0
West Virginia	5,459	5,459	0
Wisconsin	11,253	11,253	0
Total	321,827	321,827	0

TABLE 4.—FINAL NO_X BUDGET COMPONENTS FOR NONROAD MOBILE SOURCES

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
Alabama	20,146	20,146	0
Connecticut	10,736	10,736	0
Delaware	5,651	5,651	0
District of Columbia	3,135	3,135	0
Georgia	26,467	26,467	0
Illinois	56,724	56,724	0
Indiana	26,494	26,494	0
Kentucky	15,025	15,025	0
Maryland	20,026	20,026	0
Massachusetts	20,166	20,166	0
Michigan	26,935	26,935	0
Missouri	20,829	20,829	0
New Jersey	23,565	23,565	0
New York	42,091	42,091	0
North Carolina	22,005	22,005	0
Ohio	43,380	43,380	0
Pennsylvania	30,571	30,571	0
Rhode Island	2,455	2,455	0
South Carolina	14,637	14,637	0
Tennessee	52,920	52,920	0
Virginia	27,859	27,859	0

TABLE 4.—FINAL NO_X BUDGET COMPONENTS FOR NONROAD MOBILE SOURCES—Continued

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
West Virginia	10,433	10,433	0
Wisconsin	17,965	17,965	0
Total	540,215	540,215	0

TABLE 5.—FINAL NO_X BUDGET COMPONENTS FOR HIGHWAY MOBILE SOURCES

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Percent reduction
Alabama	51,274	51,274	0
Connecticut	19,424	19,424	0
Delaware	8,358	8,358	0
District of Columbia	2,204	2,204	0
Georgia	88,775	88,775	0
Illinois	112,518	112,518	0
Indiana	79,307	79,307	0
Kentucky	53,268	53,268	0
Maryland	30,183	30,183	0
Massachusetts	28,190	28,190	0
Michigan	78,763	78,763	0
Missouri	51,615	51,615	0
New Jersey	35,166	35,166	0
New York	124,2611	124,261	0
North Carolina	73,695	73,695	0
Ohio	94,850	94,850	0
Pennsylvania	91,578	91,578	0
Rhode Island	3,843	3,843	0
South Carolina	54,494	54,494	0
Tennessee	66,342	66,342	0
Virginia	72,195	72,195	0
West Virginia	20,844	20,844	0
Wisconsin	69,319	69,319	0
Total	1,310,466	1,310,466	0

TABLE 6.—FEBRUARY 18, 2000 FINAL STATEWIDE NO_X BUDGETS AND PERCENT REDUCTION

[Tons/season]

State	February 18, 2000—final base	February 18, 2000—final budget	Tons reduced	Percent reduction
Alabama	237,573	172,619	64,954	27
Connecticut	46,015	42,849	3,166	7
Delaware	23,798	22,861	937	4
District of Columbia	6,471	6,658	−187	−3
Georgia	252,154	188,572	63,582	25
Illinois	368,870	270,560	98,310	27
Indiana	340,654	229,965	110,689	32
Kentucky	237,415	162,272	75,143	32
Maryland	103,476	81,898	21,578	21
Massachusetts	87,092	84,848	2,244	3
Michigan	292,820	229,702	63,118	22
Missouri	187,845	125,603	62,242	33
New Jersey	105,489	96,876	8,613	8
New York	255,653	240,288	15,365	6
North Carolina	224,697	165,022	59,675	27
Ohio	373,223	249,274	123,949	33
Pennsylvania	345,201	257,592	87,609	25
Rhode Island	9,463	9,378	85	1
South Carolina	152,805	123,105	29,700	19
Tennessee	256,765	198,045	58,720	23
Virginia	210,784	180,195	30,589	15
West Virginia	176,699	83,833	92,866	53
Wisconsin	174,234	135,771	38,463	22
Total	4,469,196	3,357,786	1,111,410	25

TABLE 7.—PERCENT CHANGES BETWEEN MAY 14, 1999 BUDGETS AND FEBRUARY 18, 2000 BUDGETS

[Tons/season]

State	5/14/99—total 2007 budget	2/18/00—total 2007 budget	Percent change
Alabama	172,037	172,619	0
Connecticut	43,081	42,849	−1
Delaware	22,789	22,861	0
District of Columbia	6,672	6,658	0
Georgia	189,634	188,572	−1
Illinois	274,799	270,560	−2
Indiana	238,970	229,965	−4
Kentucky	155,619	162,272	4
Maryland	81,625	81,898	0
Massachusetts	85,296	84,848	−1
Michigan	224,582	229,702	2
Missouri	128,146	125,603	−2
New Jersey	100,133	96,876	−3
New York	240,123	240,288	0
North Carolina	168,373	165,022	−2
Ohio	250,930	249,274	−1
Pennsylvania	257,441	257,592	0
Rhode Island	9,810	9,378	−4
South Carolina	124,211	123,105	−1
Tennessee	197,664	198,045	0
Virginia	185,027	180,195	−3
West Virginia	91,216	83,833	−8
Wisconsin	136,172	135,771	0
Total	3,384,350	3,357,786	−1

TABLE 8.—STATE COMPLIANCE SUPPLEMENT POOL

[Tons]

State	February 18, 2000—final base	February 18, 2000—final budget	Tonnage reduction	Compliance supplement pool
Alabama	237,573	172,619	64,954	11,687
Connecticut	46,015	42,849	3,166	569
Delaware	23,798	22,861	937	168
District of Columbia	6,471	6,658	(187)	0
Georgia	252,154	188,572	63,582	11,440
Illinois	368,870	270,560	98,310	17,688
Indiana	340,654	229,965	110,689	19,915
Kentucky	237,415	162,272	75,143	13,520
Maryland	103,476	81,898	21,578	3,882
Massachusetts	87,092	84,848	2,244	404
Michigan	292,820	229,702	63,118	11,356
Missouri	187,845	125,603	62,242	11,199
New Jersey	105,489	96,876	8,613	1,550
New York	255,653	240,288	15,365	2,764
North Carolina	224,697	165,022	59,675	10,737
Ohio	373,223	249,274	123,949	22,301
Pennsylvania	345,201	257,592	87,609	15,763
Rhode Island	9,463	9,378	85	15
South Carolina	152,805	123,105	29,700	5,344
Tennessee	256,765	198,045	58,720	10,565
Virginia	210,784	180,195	30,589	5,504
West Virginia	176,699	83,833	92,866	16,709
Wisconsin	174,234	135,771	38,463	6,920
Total	4,469,196	3,357,786	1,111,410	200,000

V. Administrative Requirements

A. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 804 *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. The 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 U.S. 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).

B. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866, (58 FR 51735, October 4, 1993), this technical amendment is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget (OMB) because this action simply revises the emissions budget numbers of the NO_X SIP call final rule. The final NO_X SIP call was submitted to OMB for review. The EPA prepared a regulatory impact analysis (RIA) for the final NO_X SIP call titled ''Regulatory Impact Analysis for the NO_X SIP Call, FIP, and Section 126 Petitions.'' The RIA and any written comments from OMB to EPA and any written EPA responses to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble. This technical amendment does not create any additional impacts beyond what was promulgated in the final NO_X SIP call, therefore, no additional RIA is needed.

C. Unfunded Mandates Reform Act

This technical amendment also does not impose any additional enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). The EPA did not reach a final conclusion as to the applicability of the requirements of the UMRA to the final NO_X SIP call. The EPA prepared a statement that would be required by UMRA if its statutory provisions applied and has consulted with governmental entities as would be required by UMRA. Because today's technical amendment does not create any additional mandates, no further UMRA analysis is needed.

D. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action does not impose an enforceable duty on these entities. This action corrects the emissions inventory and statewide budgets for the NO_X SIP call and imposes no additional burdens beyond those imposed by the final NO_X SIP call. These corrections were made in response to comments received on the NO_X SIP call and the May 14, 1999 technical correction. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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, Executive Order 13084 requires EPA to develop an effective process permitting elected officials 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. The EPA stated in the final NO_X SIP call that Executive Order 13084 did not apply because the final rule does not significantly or uniquely affect the communities of Indian tribal governments or call on States to regulate NO_X sources located on tribal lands. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Executive Order 12898: Environmental Justice

In addition, since today's action is only a technical amendment, this action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). For the final NO_X SIP call, the Agency conducted a general analysis of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the requirements of the rule. These findings are presented in the RIA.

G. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 12.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's technical amendment

on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

This technical amendment will not impose any requirements on small entities. This action corrects the emissions inventory and statewide budgets for the NO_X SIP call and does not itself establish requirements applicable to small entities.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This technical amendment also is not subject to Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks) (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This technical amendment is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and is not economically significant under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, the National Technology Transfer and Advancement Act of 1997 does not apply because today's technical amendment does not require the public to perform activities conducive to the use of voluntary consensus standards under that Act. The EPA's compliance with these statutes and Executive Orders for the underlying rule, the final NO_X SIP call, is discussed in more detail in 63 FR 57477–57481 (October 27, 1998).

J. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

Any final action related to the NO_X SIP call is ''nationally applicable'' within the meaning of section 307(b)(1). As an initial matter, through this rule, EPA interprets section 110 of the CAA in a way that could affect future actions regulating the transport of pollutants. In addition, the NO_X SIP call requires 22 States and the District of Columbia to decrease emissions of NO_X. The NO_X SIP call also is based on a common core of factual findings and analyses concerning the transport of ozone and its precursors between the different States subject to the NO_X SIP call. Finally, EPA has established uniform approvability criteria that would be applied to all States subject to the NO_X SIP call. For these reasons, the Administrator has also determined that any final action regarding the NO_X SIP call is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding the NO_X SIP call must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**.

K. Paperwork Reduction Act

The EPA stated in the final NO_X SIP call that an information collection request was pending. Today's action imposes no additional burdens beyond those imposed by the final NO_X SIP call. Any issues relevant to satisfaction of the requirements of the Paperwork Reduction Act will be resolved during review and approval of the pending information collection request for the NO_X SIP call.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: February 18, 2000.

Carol M. Browner,

Administrator.

40 CFR part 51 is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7491, 7492, 7601, and 7602.

Subpart G—Control Strategy [Amended]

2. Section 51.121 is amended to revise paragraphs (e)(2), (e)(3)(iii), and (g)(2)(ii) to read as follows:

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

* * * * *

(e) * * *

(2) The State-by-State amounts of the NO_X budget, expressed in tons per ozone season, are as follows:

State	Budget
Alabama	172,619
Connecticut	42,849
Delaware	22,861
District of Columbia	6,658
Georgia	188,572
Illinois	270,560
Indiana	229,965
Kentucky	162,272
Maryland	81,898
Massachusetts	84,848
Michigan	229,702
Missouri	125,603
New Jersey	96,876
New York	240,288
North Carolina	165,022
Ohio	249,274
Pennsylvania	257,592
Rhode Island	9,378
South Carolina	123,105
Tennessee	198,045
Virginia	180,195
West Virginia	83,833
Wisconsin	135,771
Total	3,357,786

(3) * * *

(iii) The State-by-State amounts of the compliance supplement pool are as follows:

State	Compliance supplement pool (tons of NO_X)
Alabama	11,687
Connecticut	569
Delaware	168
District of Columbia	0
Georgia	11,440
Illinois	17,688
Indiana	19,915
Kentucky	13,520
Maryland	3,882
Massachusetts	404
Michigan	11,356
Missouri	11,199
New Jersey	1,550
New York	2,764
North Carolina	10,737
Ohio	22,301
Pennsylvania	15,763
Rhode Island	15
South Carolina	5,344
Tennessee	10,565

State	Compliance supplement pool (tons of NO_X)
Virginia	5,504
West Virginia	16,709
Wisconsin	6,920
Total	200,000

* * * * *

(g) * * *

(2) * * *

(ii) The revised NO_X emissions sub-inventories for each State, expressed in tons per ozone season, are as follows:

State	EGU	Non-EGU	Area	Nonroad	Highway	Total
Alabama	29,022	43,415	28,762	20,146	51,274	172,619
Connecticut	2,652	5,216	4,821	10,736	19,424	42,849
Delaware	5,250	2,473	1,129	5,651	8,358	22,861
District of Columbia	207	282	830	3,135	2,204	6,658
Georgia	30,402	29,716	13,212	26,467	88,775	188,572
Illinois	32,372	59,577	9,369	56,724	112,518	270,560
Indiana	47,731	47,363	29,070	26,494	79,307	229,965
Kentucky	36,503	25,669	31,807	15,025	53,268	162,272
Maryland	14,656	12,585	4,448	20,026	30,183	81,898
Massachusetts	15,146	10,298	11,048	20,166	28,190	84,848
Michigan	32,228	60,055	31,721	26,935	78,763	229,702
Missouri	24,216	21,602	7,341	20,829	51,615	125,603
New Jersey	10,250	15,464	12,431	23,565	35,166	96,876
New York	31,036	25,477	17,423	42,091	124,261	240,288
North Carolina	31,821	26,434	11,067	22,005	73,695	165,022
Ohio	48,990	40,194	21,860	43,380	94,850	249,274
Pennsylvania	47,469	70,132	17,842	30,571	91,578	257,592
Rhode Island	997	1,635	448	2,455	3,843	9,378
South Carolina	16,772	27,787	9,415	14,637	54,494	123,105
Tennessee	25,814	39,636	13,333	52,920	66,342	198,045
Virginia	17,187	35,216	27,738	27,859	72,195	180,195
West Virginia	26,859	20,238	5,459	10,433	20,844	83,833
Wisconsin	17,381	19,853	11,253	17,965	69,319	135,771
Total	544,961	640,317	321,827	540,215	1,310,466	3,357,786

Note to paragraph (g)(2)(ii): Totals may not sum due to rounding.

* * * * *

[FR Doc. 00–4518 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–p

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6545–2]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Arizona Department of Environmental Quality; Maricopa County; Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to delegate the authority to implement and enforce specific national emission standards for hazardous air pollutants (NESHAPs) to the Maricopa County Environmental Services Department (MC) in Arizona. The preamble outlines the process that MC will use to receive delegation of any future NESHAPs, and identifies the NESHAP categories to be delegated by today's action. EPA has reviewed MC's request for delegation and has found that this request satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting MC the authority to implement and enforce the unchanged NESHAP categories listed in this rule. This action is also notifying the public of additional NESHAPs that were delegated to the Arizona Department of Environmental Quality (ADEQ) on November 10, 1999.

DATES: This rule is effective on May 1, 2000, without further notice, unless EPA receives relevant adverse comments by April 3, 2000. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the request for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the following location:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Background

A. Delegation of NESHAPs

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to state or local air pollution control agencies the authority to implement and enforce the standards set out in 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR Part 63, Subpart E (hereinafter referred to as ''Subpart E''), establishing procedures for EPA's approval of state rules or programs under section 112(l) (*see* 58 FR 62262).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and 40 CFR Part 63, Subpart E. To streamline the approval process for future applications, a state or

local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the state or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

B. Maricopa County Delegation Request

On October 30, 1996, EPA approved the Maricopa County Environmental Services Department's (MC's) program for accepting delegation of section 112 standards that are unchanged from Federal standards as promulgated (see 61 FR 55910). The approved program reflects an adequate demonstration by MC of general resources and authorities to implement and enforce section 112 standards. However, formal delegation for an individual standard does not occur until MC obtains the necessary regulatory authority to implement and enforce that particular standard, and EPA approves MC's formal delegation request for that standard.

MC informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of section 112 standards by incorporating section 112 standards into local codes of regulation. The details of this delegation mechanism are set forth in a Memorandum of Agreement (MOA) between MC and EPA, and are available for public inspection at the U.S. EPA Region IX office (docket No. A–96–25).

On February 1, 2000, MC requested delegation for several individual section 112 standards that have been incorporated by reference into the Maricopa County Air Pollution Control Regulations. The standards that are being delegated by today's action are listed in the table at the end of this rule.

C. ADEQ delegations

On July 17, 1998, EPA published a direct final action delegating to ADEQ several NESHAPs and approving ADEQ's delegation mechanism for future standards (see 63 FR 38478). That action explained the procedure for EPA to grant delegations to ADEQ by letter, with periodic Federal Register listings of standards that have been delegated. On October 6, 1999, ADEQ requested delegation of the following NESHAPs contained in 40 CFR Part 63:

Subpart S—NESHAP from the Pulp and Paper Industry

Subpart LL—NESHAP for Primary Aluminum Reduction Plants

Subpart EEE—NESHAP for Hazardous Waste Combustors

On November 10, 1999, EPA granted delegation to ADEQ for these NESHAPs. Today's action is serving to notify the public of the November 10, 1999, delegation and to codify these delegations into the Code of Federal Regulations.

II. EPA Action

A. Delegation to Maricopa County for Specific Standards

After reviewing MC's request for delegation of various NESHAPs, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91. Accordingly, MC is granted the authority to implement and enforce the requested NESHAPs. These delegations will be effective on May 1, 2000. A table of the NESHAP categories that will be delegated to MC is shown at the end of this rule. Although MC will have primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. In addition, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112.

After a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency becomes the primary point of contact with respect to that NESHAP. Pursuant to 40 CFR sections 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA Region IX waives the requirement that notifications and reports for delegated standards be submitted to EPA as well as to MC.

In its February 1, 2000 request, MC included a request for delegation of the regulations implementing CAA section 112(i)(5), codified at 40 CFR Part 63, Subpart D. These requirements apply to state or local agencies that have a permit program approved under title V of the Act (see 40 CFR 63.70). MC received final interim approval of its title V operating permits program on October 30, 1996 (see 61 FR 55910). State or local agencies implementing the requirements under Subpart D do not need approval under section 112(l). Therefore, EPA is not taking action to delegate 40 CFR Part 63, Subpart D to MC.

MC also included a request for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR Part 63, Subpart B. These requirements apply to major sources only, and need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing section 112(g), EPA stated its view that ''the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)'' (*see* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that ''section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements'' (*see* 59 FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l). As a result, EPA is not taking action to delegate 40 CFR Part 63, Subpart B to MC.

B. Maricopa's delegation mechanism for future standards

Today's document serves to notify the public of the details of MC's procedure for receiving delegation of future NESHAPs. As set forth in the MOA, MC intends to incorporate by reference, into local codes of regulation, each newly promulgated NESHAP for which it intends to seek delegation. MC will then submit a letter to EPA Region IX, along with proof of regulatory authority, requesting delegation for each individual NESHAP. Region IX will respond in writing that delegation is either granted or denied. If a request is approved, the delegation of authorities will be considered effective upon the date of the response letter from Region IX. Periodically, EPA will publish in the **Federal Register** a listing of the standards that have been delegated. Although EPA reserves its right, pursuant to 40 CFR section 63.96, to review the appropriateness of any future delegation request, EPA will not institute any additional comment periods on these future delegation actions. Any parties interested in commenting on this procedure for delegating future unchanged NESHAPs should do so at this time.

C. Notice of Delegations to ADEQ

Today's document serves to notify the public that on November 10, 1999, EPA granted delegation to ADEQ for the following NESHAPs contained in 40 CFR Part 63:

- Subpart S—NESHAP from the Pulp and Paper Industry
- Subpart LL—NESHAP for Primary Aluminum Reduction Plants
- Subpart EEE—NESHAP for Hazardous Waste Combustors

Today's action will codify these delegations into the Code of Federal Regulations.

D. Opportunity for Public Comment

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action 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 for this action should relevant adverse comments be filed. This action will be effective May 1, 2000, without further notice unless the Agency receives relevant adverse comments by April 3, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing this final rule and informing the public that the rule will take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the rule. Any parties interested in commenting on the rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 1, 2000, and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Regulatory Flexibility Act

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

Delegations of authority to implement and enforce unchanged Federal standards under section 112(l) of the Clean Air Act do not create any new requirements but simply transfer primary implementation authorities to the State. Therefore, because this action does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected.

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 1, 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 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: February 18, 2000.

David P. Howekamp,

Director, Air Division, Region IX.

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by revising paragraph (a)(3) to read as follows:

§ 63.99 Delegated Federal Authorities

(a) * * *

(3) *Arizona.* The following table lists the specific Part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Arizona. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ [1]	MCESD [2]	PDEQ [3]	PCAQCD [4]
A	General Provisions	X	X	X	X
F	Synthetic Organic Chemical Manufacturing Industry	X	X	X	X
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X	X	X	X
H	Organic Hazardous Air Pollutants: Equipment Leaks	X	X	X	X
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X	X	X	X
L	Coke Oven Batteries	X	X	X	X
M	Perchloroethylene Dry Cleaning	X	X	X	X
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	X	X	X	X
O	Ethylene Oxide Sterilization Facilities	X	X	X	X
Q	Industrial Process Cooling Towers	X	X	X	X
R	Gasoline Distribution Facilities	X	X	X	X
S	Pulp and Paper Industry	X	.....	.....	.....
T	Halogenated Solvent Cleaning	X	X	X	X
U	Group I Polymers and Resins	X	X	.....	X
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X	X	X	X
X	Secondary Lead Smelting	X	X	X	X
CC	Petroleum Refineries	X	X	X	X
DD	Off-Site Waste and Recovery Operations	X	X	.....	X
EE	Magnetic Tape Manufacturing Operations	X	X	X	X
GG	Aerospace Manufacturing and Rework Facilities	X	X	X	X
JJ	Wood Furniture Manufacturing Operations	X	X	X	X
KK	Printing and Publishing Industry	X	X	X	X
LL	Primary Aluminum Reduction Plants	X	.....	.....	.....
OO	Tanks—Level 1	X	X	.....	X
PP	Containers	X	X	.....	X
QQ	Surface Impoundments	X	X	.....	X
RR	Individual Drain Systems	X	X	.....	X
VV	Oil-Water Separators and Organic-Water Separators	X	X	.....	X
EEE	Hazardous Waste Combustors	X	.....	.....	.....
JJJ	Group IV Polymers and Resins	X	X	.....	X

[1] Arizona Department of Environmental Quality.
[2] Maricopa County Environmental Services Department.
[3] Pima County Department of Environmental Quality.
[4] Pinal County Air Quality Control District.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300981; FRL–6492–6]

RIN 2070–AB78

Fenpropathrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenpropathrin (alpha-cyano-3-phenoxy-benzyl 2,2,3,3-tetra-methylcyclopropanecarboxylate) in or on citrus, grapes, head and stem *Brassica* (crop subgroup 5A), melon (crop subgroup 9A) and pome fruits. Valent USA Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective March 2, 2000. Objections and requests for hearings, identified by docket control number OPP–300981, must be received by EPA on or before May 1, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300981 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: William Sproat, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8587; and e-mail address: sproat.william@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' 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–300981. 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.

II. Background and Statutory Findings

In the **Federal Register** of August 5, 1998 (63 FR 41835) (FRL–6017–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP 7F3485, 6F4648, 1F3949) for a tolerance by Valent USA Company, 1333 North California Boulevard, Suite 600, Walnut Creek, CA 94596–8025. This notice included a summary of the petition prepared by Valent USA Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.466 be amended by establishing a tolerance for residues of the insecticide fenpropathrin, in or on various food commodities as follows: (1) PP7F3485 proposes the establishment of tolerances for the pome fruit crop group (crop group 11) at 5.0 parts per million (ppm); (2) PP1F3949 proposes the establishment of tolerances for grapes at 5.0 ppm and the processed product raisins at 10 ppm; for the citrus fruit crop group (crop group 10) at 2.0 ppm and the processed product citrus oil at 50.0 ppm and dried citrus pulp at 4.0 ppm. Based on EPA's review of processing studies submitted by Valent, the petition was revised by the petitioner to propose the tolerance on citrus oil at 75.0 ppm; (3) PP6F4648 proposes the establishment of tolerances for the head and stem Brassica crop group (crop group 5A) at 3.0 ppm and the melons crop group (crop group 9A) at 0.5 ppm.

Fenpropathrin is the active ingredient in DANITOL 2.4 EC Spray (EPA Reg. No. 59639–35) and TAME 2.4 EC Spray (EPA Reg. No. 59639–77). Tolerances have been established on cottonseed; cottonseed oil; meat, meat byproducts, and fat of cattle, goats, hogs, horses, sheep and poultry; eggs; milkfat; peanuts; peanut hay; strawberries; and tomatoes. Fenpropathrin is currently proposed for use on pome fruits (crop group 11) including apples to control spotted tentiform leafminer, white apple leafhopper, tarnished plant bug, rosy apple aphid, potato leafhopper, apple maggot, codling moth, European apple sawfly, green fruitworm, lesser appleworm, Pandemis leafroller, plum curculio, obliquebanded leafroller, oriental fruitmoth, redbanded leafroller, spirea aphid, tufted apple budmoth, variegated leafroller, Japanese beetle, European red mite, twospotted spider mite, and pears to control pear psylla (overwintering adults) and codling moth; grapes to control eastern grape leafhopper, western grape leafhopper, variegated grape leafhopper, grape leaf skeletonizer, grape berry moth, and Japanese beetles; head and stem Brassica (crop group 5A) including cabbage, broccoli, Brussels sprouts, and cauliflower to control yellowstriped armyworms, cabbage looper, imported cabbageworm, silverleaf whitefly, sweetpotato whitefly, diamondback moth southern cabbageworm, cabbage webworm, green peach aphid, and cabbage aphid; citrus fruits (crop group 10) to control citrus thrips, citrus blackfly, citrus flat mite, citrus red mite, citrus rust mite, Texas citrus mite, and twospotted spider mite; and melons (crop group 9A) including watermelons, honeydews, and muskmelons to control fall armyworms, twospotted spider mite (except in CA), silverleaf whitefly and sweetpotato whitefly.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of fenpropathrin on pome fruit (crop group 11) and grapes at 5.0 ppm; head and stem Brassica (crop group 5A) at 3.0 ppm; citrus fruit (crop group 10) at 2.0 ppm; melons (crop group 9A) at 0.5 ppm; and in the processed products citrus oil at 75 ppm, raisins at 10 ppm, and dried citrus pulp at 4.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the

toxic effects caused by fenpropathrin are discussed in this unit.

1. Acute toxicity studies with technical fenpropathrin. Oral LD_{50} in the rat is 54.0 milligram/kilogram (mg/kg) for males and 48.5 (mg/kg) for females—Toxicity Category I; dermal LD_{50} is 1,600 mg/kg for males and 870 mg/kg for females—Category II; acute inhalation (unable to generate sufficient test article vapor or aerosol to elicit toxicity)—Category IV; primary eye irritation (no corneal involvement, mild iris and conjunctival irritation)—Category III; and primary dermal irritation (no irritation)—Category IV. Fenpropathrin is not a sensitizer.

2. In a subchronic oral toxicity study, rats were dosed at concentrations of 0, 3, 30, 100, 300, or 600 ppm in the diet. The lowest effect level (LEL) is 600 ppm (30 mg/kg/day) based on body weight reduction (female), body tremors, and increased brain (female) and kidney (male) weights. The no observed adverse effect level (NOAEL) is 300 ppm (15 mg/kg/day).

3. In a subchronic oral toxicity study, dogs were dosed at concentrations of 0, 250, 500, or 1,000 ppm in the diet. A 1,000 ppm dog was sacrificed moribund during the third week after having tremors and showing other signs of poisoning caused by the test article. Because of this death, the dose for this group was reduced to 750 ppm for the remainder of the study. The lowest observed adverse effect level (LOAEL) is 250 ppm (7.25 mg/kg/day) based on signs of GI tract disturbance. There was no NOAEL—note dog chronic, below).

4. In a 21-day dermal toxicity study, rabbits were dosed 5 days/week for 3 weeks on abraded or unabraded skin at doses of 0, 500, 1,200, or 3,000 mg/kg/day. There were no dose-related effects on body weight, food consumption, clinical pathology, gross pathology, or organ weights. Trace or mild inflammatory cell infiltration was seen in the intact and abraded skin in all groups, including controls, and was attributed to the test article. The systemic NOAEL is > 3,000 mg/kg/day. Local irritation only. Although a 21-day dermal toxicity study in rabbits is available, the Agency has determined that rats are the most sensitive species to ascertain the dermal toxicity potential of pyrethroid insecticides. Although these data are lacking, EPA has sufficient toxicity data to support these tolerances and these additional studies are not expected to significantly change the risk assessment.

5. In a 1-year feeding study, dogs were dosed at 0, 100, 250, or 750 ppm in the diet. The systemic LEL is 250 ppm (6.25 mg/kg/day) based on tremors in all dogs. The neurologic NOAEL is 100 ppm (2.5 mg/kg/day); the systemic NOAEL is 100 ppm (2.5 mg/kg/day).

6. In a chronic feeding/carcinogenicity study, rats were dosed at 0, 50, 150, 450, or 600 ppm in the diet (0, 1.93, 5.71, 17.06, or 22.80 mg/kg/day in males, and 0, 2.43, 7.23, 19.45, or 23.98 mg/kg/day in females). There was no evidence of carcinogenicity at any dose up to and including 600 ppm. The systemic NOAEL (male) is 450 ppm (17.06 mg/kg/day). The systemic NOAEL (female) is 150 ppm (7.23 mg/kg/day). Systemic LEL (male) is 600 ppm highest dose tested (HDT) based on increased mortality, body tremors, increased pituitary, kidney, and adrenal weights. The systemic LEL (female) is 450 ppm (19.45 mg/kg/day) based on increased mortality and body tremors.

7. In a chronic feeding/carcinogenicity study, mice were dosed at 0, 40, 150, or 600 ppm in the feed (0, 3.9, 13.7, or 56.0 mg/kg/day in males, and 0, 4.2, 16.2, or 65.2 mg/kg/day in females). Mortality was highest during the final quarter of the study, but the incidence was similar in all dosed and control groups. No other indications of toxicity or carcinogenicity were seen. The systemic NOAEL is > 600 ppm (HDT; male/female, 56.0/65.2 mg/kg/day).

8. In a developmental toxicity study in rats, pregnant female rats were dosed by gavage on gestation days 6–15 at 0 (corn oil control), 0.4, 1.5, 2.0, 3.0, 6.0, or 10.0 mg/kg/day. The maternal NOAEL is 6 mg/kg/day; maternal LEL is 10 mg/kg/day based on death, moribundity, ataxia, sensitivity to external stimuli, spastic jumping, tremors, prostration, convulsions, hunched posture, squinted eyes, chromodacryorrhea, and lacrimation; developmental NOAEL is 10 mg/kg/day.

9. In a developmental toxicity study in rabbits, pregnant female New Zealand rabbits were dosed by gavage on gestation days 7 through 19 at 0, 4, 12, or 36 mg/kg/day. Maternal NOAEL is 4 mg/kg/day; maternal LEL is 12 mg/kg/day based on grooming, anorexia, flicking of the forepaws; developmental NOAEL is > 36 mg/kg/day (HDT).

10. A 3-generation reproduction study was performed in rats. Rats were dosed with fenpropathrin at concentrations of 0, 40, 120, or 360 ppm (0, 3.0, 8.9, or 26.9 mg/kg/day in males; 0, 3.4, 10.1, or 32.0 mg/kg/day in females, respectively). Parents (male/female): Systemic NOAEL = 40 ppm (3.0/3.4 mg/kg/day). Systemic LEL = 120 ppm (8.9/10.1 mg/kg/day) based on body tremors with spasmodic muscle twitches, increased sensitivity and maternal lethality; reproductive NOAEL = 120 ppm (8.9/10.1 mg/kg/day). Reproductive LEL = 360 ppm (26.9/32.0 mg/kg/day) based on decrease mean F_{1B} pup weight, increased F_{2B} loss. Pups (male/female): Developmental NOAEL = 40 ppm (3.0/3.4 mg/kg/day). Developmental LEL = 120 ppm (8.9/10.1 mg/kg/day) based on body tremors, increased mortality.

11. Studies on gene mutation and other genotoxic effects: An Ames Assay was negative for *Salmonella* TA98, TA100, TA1535, TA1537, and TA1538; and *E. coli* WP2uvrA (trp-) with or without metabolic activation. Sister Chromosome Exchange in CHO–K1 Cells—there were no increases in sister chromatid exchanges seen in the CHO–K1 cells treated with S–33206 or the DMSO vehicle. Cytogenetics *in vitro* (CHO/CA)—negative for chromosome aberrations (CA) in Chinese hamster ovary (CHO) cells exposed *in vitro* to toxic doses (≧30 μg/mL) without activation; and to limit of solubility (1,000 μg/mL) with activation. In Vitro Assay in Mammalian Cells—equivocal results—of no concern. DNA Damage/Repair in *Bacillus subtilis*—not mutagenic or showing evidence of DNA damage at ≥5,000 μg/paper disk.

12. In a metabolism study in rats, animals were dosed with radiolabeled fenpropathrin radiolabeled in either the alcohol or acid portion of the molecule. Rats received 14 daily oral low-doses of 2.5 mg/kg/day of unlabeled fenpropathrin followed by a 15th dose of either the alcohol or acid radiolabeled fenpropathrin. Groups of rats received a single dose of either of the two radiolabeled test articles at 2.5 mg/kg or 25 mg/kg. No clinical signs were seen in any rats. The major biotransformations included oxidation at the methyl group of the acid moiety, hydroxylation at the 4'-position of the alcohol moiety, cleavage of the ester linkage, and conjugation with sulfuric acid or glucuronic acid. Four metabolites were found in the urine of rats dosed with alcohol labeled fenpropathrin. The major metabolites were the sulfate conjugate of 3-(4'-hydroxyphenoxy)benzoic acid and 3-phenoxybenzoic acid (22–44% and 3–9% of the administered dose, respectively). The major urinary metabolites of the acid-labeled fenpropathrin were TMPA-glucuronic acid and TMPA–CH_2OH (11–26% and 6–10% of the administered dose, respectively). None of the parent chemical was found in urine. The major elimination products in the feces included the parent chemical (13–34% of the administered dose) and four metabolites. The fecal metabolites (and the percentage of administered dose) included CH_2OH-fenpropathrin (9–

20%), 4'-OH-fenpropathrin (4–11%), COOH-fenpropathrin (2–7%), and 4'-OH–CH_2OH-fenpropathrin (2–7%). There are no qualitatively unique plant metabolites. The primary aglycones are identical in both plants and animals; the only difference is in the nature of the conjugating moieties employed.

13. The metabolism and potential toxicity of the small amounts of terminal plant metabolites have been tested on mammals. Glucoside conjugates of 3-phenoxy-benzyl alcohol and 3-phenoxybenzoic acid, administered orally to rats, were absorbed as the corresponding aglycones following cleavage of the glycoside linkage in the gut. The free or reconjugated aglycones were rapidly and completely eliminated by normal metabolic pathways. The glucose conjugates of 3-phenoxybenzyl alcohol and 3-phenoxy-benzoic acid are less toxic to mice than the corresponding aglycones.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute reference dose (RfD) of 0.06 mg/kg/day was established based on clinical signs of neurotoxicity on the day of dosing in dams during a developmental toxicity study in rats. The NOAEL was 6.0 mg/kg/day to which an uncertainty factor of 100 was applied.

2. *Short- and intermediate-term toxicity.* EPA did not select an end-point for short and intermediate dermal risk assessments based on the lack of dermal or systemic toxicity at 3,000 mg/kg/day in a 21-day dermal study in rabbits. Therefore, a dermal risk assessment is not necessary.

3.*Chronic toxicity.* EPA has established the RfD for fenpropathrin at 0.025 milligrams/kilograms/day (mg/kg/day). This RfD is based on the observance of tremors in dogs in the 1-year oral feeding study. The NOAEL was 2.5 mg/kg/day to which an uncertainty factor of 100 was applied.

4. *Carcinogenicity.* As no indication of carcinogenicity was seen in rats or mice, fenpropathrin was classified as a group E chemical. A cancer risk assessment is therefore not necessary.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.466) for the residues of fenpropathrin, in or on a variety of raw agricultural commodities. Tolerances are established on plant commodities ranging from 0.6 ppm on tomatoes to 20 ppm on peanut, hay. Tolerances are also established on animal commodities, including meat, milk, poultry, and eggs. Fenpropathrin is a pyrethroid insecticide with broad spectrum activity on insects and mites. When formulated as the product DANITOL 2.4 EC Spray, the product is registered for agricultural use on outdoor terrestrial food crops. A separate fenpropathrin product, TAME 2.4 EC Spray, is registered for commercial, professional non-food use on indoor and outdoor ornamental and nursery stock. There are no uses registered for professional indoor pest control, termite prevention, homeowner use, or turf application. Danitol 2.4 EC Spray contains 30.9% fenpropathrin by weight (2.4 pounds of fenpropathrin per gallon). Danitol 2.4 EC Spray is not to be applied through any type of irrigation system. Risk assessments were conducted by EPA to assess dietary exposures from fenpropathrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The Dietary Exposure Evaluation Model (DEEM) acute analysis provides an estimate of the distribution of single-day exposures for the overall U.S. population and certain subgroups. The analysis evaluates individual food consumption as reported by respondents in the USDA 1989–1992 Continuing Survey of Food Intake by Individuals (CSFII) and accumulates exposure to the chemical for each commodity.

The percent acute population adjusted dose (aPAD) is a measure of how close the high end exposure comes to the aPAD. The percent aPAD that would be above EPA's level of concern is 100%. For this analysis the FQPA 10x safety factor was removed. As a result, the aPAD is equivalent to the acute RfD: 0.06 mg/kg/day. The exposure of all subgroups at the 99.9th percentile is below 100% aPAD with two exceptions: nursing infants and children 1–6 years (164% and 107%, respectively). In the analysis submitted by Valent all subgroups had exposures which were below 100% aPAD. However, Valent used the 1994–1996 food consumption survey. The Agency is in the process of reviewing the recipe translation for this survey. This review has not been completed. Therefore it is current EPA policy to use the 1989–1992 survey.

In the 1989–1992 survey there is a consumption value associated with grapes which can be considered to be aberrant. A single 10-month old nursing infant consumed ⅔ of a pound (310 grams) of grapes in 1-day. This is an unusually high quantity of grapes for an infant less than 1 years old to consume in 1-day. The percent aPAD for nursing infants at the 99.5th percentile of exposure is 92%. The exposure at the 99.5th percentile places less weight on the extreme value in the food consumption survey. There were only 4 nursing infants in the 1989–1992 survey who ate grapes. Because of the aberrant data point, the analysis was run using the 1994–1996 food consumption survey. When this survey is used the exposure of nursing infants at the 99.9th percentile of exposure is 50%. As for the subgroup children 1–6 years, EPA notes that at the 99.75th percentile of exposure (1989–1992 survey) the aPAD for this group decreases to 62%. In addition, when the analysis was run using the 1994–1996 food consumption database, the exposure of children 1–6 years decreased to 77% aPAD (99.9th percentile). The analysis was also run with grapes removed from the commodity residue list. The 1989–1992 food consumption survey was used. The most highly exposed subgroup is females (13+/nursing) which utilized 61% of the aPAD. This analysis confirms that in the 1989–1992 survey grapes is a major driver for acute dietary risk.

The acute analysis for fenpropathrin provides refined estimates (Tier 3) of dietary exposure for the U.S. population and all population subgroups. These estimates were made with the use of field trial values and percent crop treated (PCT) estimates. When the 1989–1992 food consumption survey is used, the U.S. population and most of the population subgroups are below EPA's level of concern. The population subgroups which are above EPA's level of concern are nursing infants and children 1–6 years. If the Agency uses data from the 1994–1996 food consumption survey for nursing infants and children 1–6 years, the exposure to these population subgroups is below EPA's level of concern. EPA feels that this action is justified for the following reasons: (1) There were only 4 nursing infants in the 1989–1992 survey who ate grapes (the one data point will therefore exert an inordinate amount of influence on the results of the analysis, particularly at the 99.9th percentile); (2) for most population subgroups the aPAD values given by the two consumption surveys were comparable; (3) field trial data were used in the analysis which makes the analysis more conservative than if monitoring data had been available; (4) although the analysis is refined there is still room for further refinement—100% PCT was assumed for the following crops: grapes, pome fruits, citrus, head and stem Brassica, and melons (based on PCT values for

registered uses, the PCT for proposed uses will probably be well below 100% once the uses are granted); and (5) although acute exposure to fenpropathrin resulting from residues present in animal commodities is refined, there is room for further refinement here also. Animal diets which are more realistic can be constructed. For this analysis the nutritional value of the diets has not been considered. Instead, maximum theoretical dietary burdens were constructed. EPA anticipates that the 1994–1996 food consumption survey will be available for use in the first quarter of calendar year 2000.

(ii). Chronic, non-carcinogenic dietary risk a DEEM chronic dietary exposure analysis was performed using anticipated residues (field trial data) and PCT data provided by the Agency. As with the acute analysis, EPA used the 1989–1992 food consumption data base whereas Valent used the 1994–1996 data base. The FQPA 10x safety factor was removed. As a result, the chronic PAD (cPAD) is equivalent to the chronic RfD: 0.025 mg/kg/day. Based on the 1989–1992 data base, the most highly exposed subgroup (children 1–6 years) utilized 9% of the cPAD. As a result, exposure to fenpropathrin of the U.S. population and all population subgroups is below EPA's level of concern.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which may be applied in a particular area.

2. *From drinking water.* Fenpropathrin is persistent and immobile. There are no established Maximum Contaminant Levels for residues of fenpropathrin in drinking water. No health advisory levels for fenpropathrin in drinking water have been established (EPA Safe Drinking Water Hotline, 1(800)426–4791, date of call: September 7, 1999). EPA has used drinking water numbers based on Generic Estimated Environmental Concentration (GENEEC) and Screening Concentration in Ground Water (SCI–GROW) modeling.

The Agency used its SCI–GROW (Screening Concentration in Ground Water) screening model and environmental fate data to determine the estimated environmental concentration (EEC) for fenpropathrin in ground water. SCI–GROW is an empirical model based upon actual ground water monitoring data collected for the registration of a number of pesticides that serve as benchmarks for the model. The current version of SCI–GROW appears to provide realistic estimates of pesticide concentrations in shallow, highly vulnerable ground water sites (i.e., sites with sandy soils and depth-to-ground water of 10 to 20 feet). EPA reported a ground water EEC of 0.006 ppb for fenpropathrin applied to pears and citrus fruits.

The Agency used its GENEEC screening model and environmental fate data to determine the EECs for fenpropathrin in surface water. GENEEC is used to estimate pesticide concentrations in surface water for up to 56 days after a single runoff event. GENEEC simulates a 1 hectare by 2 meters deep edge-of-the-field farm pond which receives pesticide runoff from a treated 10 hectare field. GENEEC provides an upper-bound concentration value. GENEEC can substantially overestimate (by a ≥3-fold factor) true pesticide concentrations in drinking water. The acute (peak) value for use of fenpropathrin on pears and citrus fruits at the maximum application rate is 2.72 ppb and the chronic (average 56-day) value is 0.34 ppb.

A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Different populations will have different DWLOCs. The Agency uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. They do have an indirect regulatory impact through aggregate exposure and risk assessments.

i. *Acute exposure and risk.* For purposes of this acute risk assessment, the estimated acute maximum concentration (EEC) for fenpropathrin in surface and ground waters (2.72 ppb) was used for comparison to the back-calculated DWLOCs for the acute endpoint. The drinking water EEC (when determined using dietary

exposures at the 99.9th percentile of exposure) exceeds the DWLOCs for the population subgroups nursing infants and children 1–6 years. The DWLOCs, which were calculated based on the exposure values at the 99.5th percentile of exposure for nursing infants and at the 99.75th percentile of exposure for children 1–6 years, were above the drinking water EEC. The same is true for the DWLOCs calculated based on the 99.9th percentile exposure values from the 1994–1996 food consumption survey. EPA anticipates that the 1994–1996 food consumption survey will be available for use in the first quarter of calendar year 2000. For this risk assessment only, the Agency is using the data from the 1994–1996 food consumption survey for these two population subgroups. Although the dietary exposure estimates are highly refined, EPA notes that 100% crop treated was used for the following crops: grapes, pome fruits, melons, citrus, and head and stem Brassica. Based on PCT values for registered uses, the PCT for proposed uses will probably be significantly less than 100%.

The DWLOCs were calculated based on the dietary analysis in which grapes were eliminated. Based on this analysis, for all population subgroups the acute DWLOCs exceed the drinking water EEC. For the population subgroup nursing infants and children 1–6 years, the DWLOC's were 400 and 250 ppb, respectively. Therefore, the acute risk of exposure to fenpropathrin from food and drinking water is below EPA's level of concern for the U.S. population and all population subgroups.

ii.*Chronic exposure and risk.* EPA generally reduces GENEEC model values by a factor of three when determining whether or not a chronic level of comparison has been exceeded. If the GENEEC model value is > 3 times the chronic DWLOC, the pesticide is considered to have passed the screen and no further assessment is needed. Acute DWLOCs are to be compared directly to GENEEC estimates; both acute and chronic DWLOCs are to be compared directly to SCI–GROW estimates. (Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments, December 2, 1997).

Based on the chronic dietary food exposure estimates, chronic DWLOCs for fenpropathrin were calculated. The lowest DWLOC is 230 ppb for nursing infants and children 1–6 years. The highest EEC for fenpropathrin in surface water is from the application of fenpropathrin to pears and citrus fruits (0.34 ppb) and is substantially lower than the DWLOCs calculated. Therefore, chronic exposure to fenpropathrin residues in drinking water do not exceed EPA's level of concern.

3. *From non-dietary exposure.* There are no current registered residential uses for fenpropathrin. However, the label for TAME 2.4 EC SprayTM does include nonfood use on indoor and outdoor ornamental and nursery plantings. According to the label, this product can be applied by Professional Certified Operators (PCO) only. Therefore, an assessment for residential handlers is not required.

There is potential for dermal and oral exposure to adults and children during postapplication activities. Because no dermal endpoint of concern was found in dermal studies, no risk from dermal exposure is expected. However, an exposure assessment was performed for the following postapplication exposure scenarios: (1) incidental non-dietary ingestion of pesticide residues on garden plants from hand-to-mouth transfer, and (2) incidental non-dietary ingestion of soil from pesticide-treated areas.

i. *Acute exposure and risk.* Using EPA Standard Operating Procedures for Residential Exposure Assessments (Draft, December 18, 1997), the Short-Term Exposure Estimates and Risk Assessment (day ''0'', postapplication must be assessed on the same day the pesticide is applied because it is assumed that toddlers could play in the ornamental site or garden immediately after application) were calculated. The MOE's for hand to mouth and soil ingestion are 120 and 460,000 respectively. These short term MOEs are above 100 and do not exceed EPA's level of concern.

The exposure estimates that were generated are based on some upper-percentile (i.e., maximum application rate, available residues, duration of exposure) and some central tendency (i.e., transfer coefficient, surface area, hand-to-mouth activity, and body weight) assumptions and are considered to be representative of high-end exposures. The uncertainties associated with this assessment stem from the use of an assumed amount of pesticide available from ornamentals, and assumptions regarding dissipation, transfer of chemical residues, and hand-to mouth activity. The estimated exposures are believed to be reasonable high-end estimates based on observations from chemical-specific field studies and professional judgement.

ii. *Chronic exposure and risk.* Intermediate-term and chronic postapplication exposures are not expected because these activities (incidental non-dietary ingestion of pesticide residues on garden plants from hand-to-mouth transfer and incidental non-dietary ingestion of soil from pesticide-treated areas) will not occur everyday at ornamental and nursery sites.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether fenpropathrin has a common mechanism 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, fenpropathrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenpropathrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* For this risk assessment, the acute aggregate risk is equivalent to the risk from food + water. Using the 1994–96 Food Consumption Survey, it is estimated that acute exposure to fenpropathrin from food for the most highly exposed population subgroup, children (1–6 years), will utilize 77% of the acute PAD (see discussion in Unit III.C.). An acute dietary exposure (food + water) of 100% or less of the acute PAD is needed to protect the safety of all population subgroups. The EEC's of fenpropathrin in surface and ground water for acute exposure are below the DWLOCs. Thus, the acute aggregate risk of exposure to fenpropathrin from food and drinking water is below EPA's level of concern for the U.S. population and all population subgroups

2. *Chronic risk.* For this risk assessment, the chronic aggregate risk is equivalent to the risk from food + water. This is because there is no chronic residential exposure scenario. In

addition, no chronic dermal or inhalation endpoints were identified. As discussed above, EPA has concluded that exposure to fenpropathrin from food for the most highly exposed subgroup (children 1–6 years) will utilize 9% of the cPAD. EPA generally has no concern for exposure 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. The EEC's for fenpropathrin in drinking water are substantially lower than the DWLOCs. Therefore, chronic aggregate risk does not exceed EPA's level of concern.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. A short-term aggregate risk assessment was performed for infants and children because of the existence of short-term postapplication residential exposure scenarios. There is a hand-to-mouth exposure of 0.049 mg/kg/day and a soil ingestion exposure of 0.000013 mg/kg/day. These exposures were aggregated with the average food exposure to arrive at short-term aggregate DWLOCs. These DWLOCs were then compared with the 56-day GENEEC maximum EEC of 0.34 ppb. For all infant/children population subgroups the DWLOCs exceeded the maximum EEC. As a result, the short-term aggregate risk from exposure to fenpropathrin does not exceed EPA's level of concern for any of the infant/children population subgroups. Intermediate-term endpoints were not identified. In addition, intermediate-term postapplication exposures are not expected from the registered residential use of fenpropathrin.

4. *Aggregate cancer risk for U.S. population.* The Agency has determined that there is no evidence of carcinogenicity in studies in either the mouse or rat.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenpropathrin residues.

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

1. *Safety factor for infants and children—* i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenpropathrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 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.

ii. *Developmental toxicity studies.* See Toxicological Profile in Unit III.A. of this preamble.

iii. *Reproductive toxicity study.* See Toxicological Profile in Unit III.A. of this preamble.

iv. *Prenatal and postnatal sensitivity.* There is no evidence of sensitivity to young rats or rabbits following prenatal or postnatal exposure to fenpropathrin.

v. *Conclusion.* There is a complete toxicity data base for fenpropathrin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the above, EPA concludes that reliable data support use of the 100-fold uncertainty factor and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* (Food + Water) The percentages of the acute PAD utilized at the 99.9 percentile exposure are 56% for infants and 77% for children (1–6 years), the most highly exposed population subgroup. The EEC for fenpropathrin in drinking water is below the DWLOC. The Agency has no cause for concern if total acute exposure is 100% or less of the acute PAD. Therefore, the Agency has no acute aggregate concern due to exposure to fenpropathrin through food and drinking water.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fenpropathrin from food will utilize 5% of the cPAD for infants and 9% for children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenpropathrin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* See Aggregate Risks and Determination of Safety for US Population in Unit III (D)(3) above.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants is adequately understood. Adequate metabolism studies with three dissimilar crops have been submitted. The metabolism of fenpropathrin in apples, tomatoes, and cotton has been reviewed and has been considered adequate. The residue of concern is the parent compound fenpropathrin.

The nature of the residue in animals is adequately understood. Metabolism studies with goats and poultry dosed with radiolabeled fenpropathrin were submitted. The majority of the residue in muscle, fat, and milk and eggs was found to be the parent compound, fenpropathrin. The residue in kidney and liver consisted mainly of various metabolites. Livestock metabolites, with the possible exception of TMPA lactone, have also been identified in rat metabolism studies and their contributions to the overall toxicity of fenpropathrin have been considered. For the apple and pear tolerances, the levels of the metabolites in livestock were low enough not to be included in the tolerance expression. The organs in which metabolites of the synthetic pyrethroids are found (i.e., liver and kidney) are minor human food consumption items. As a result, the nature of the residue in animals is adequately understood for the purposes of this tolerance petition. The residue of

concern in livestock commodities is the parent compound.

B. Analytical Enforcement Methodology

EPA has concluded that adequate methodology is available for enforcement of the proposed tolerances for plant and animal commodities. Method RM–22–4 can be used for the analysis of fenpropathrin in citrus, grapes, head and stem Brassica crops, melons, and pome fruits. This method includes cleanup procedures for oily crops and oils. Residues are extracted with acetone/hexane, cleaned up with silica gel and C18 Sep Pak chromatography and detection is by gas chromatography. Oily crops are extracted with acetone/hexane, partitioned into hexane, cleaned up by gel permeation, silica gel, and C18 Sep Pak chromatography and detected by gas chromatography. Oils are partitioned between hexane and acetonitrile, cleaned up on an alumina column and determined by electron capture gas chromatography using a split/splitless capillary column. The limit of detection is reported as 0.01 ppm. An EPA trial of Method RM–22–4 to determine fenpropathrin residues in apples was successfully conducted. The method was also validated for meat and milk. Recovery of fenpropathrin was tested through FDA multiresidue methods and fenpropathrin was found to be completely recovered by the PAM I Section 302 Method (Luke Method).

C. Magnitude of Residues

An adequate number of residue field trials reflecting the proposed use rates were submitted to EPA to demonstrate that tolerances for pome fruit (crop group 11) and grapes at 5.0 ppm; head and stem Brassica (crop group 5A) at 3.0 ppm; citrus fruit (crop group 10) at 2.0 ppm; melons (crop group 9A) at 0.5 ppm; processed products citrus oil at 75 ppm, raisins at 10 ppm, and dried citrus pulp at 4.0 ppm will not be exceeded when fenpropathrin products labeled for these uses are used as directed.

D. International Residue Limits

There are Codex maximum residue levels MRLs of 5 ppm for both grapes and pome fruit. EPA is establishing tolerances of 5 ppm for these commodities which will result in harmonized tolerances.

E. Rotational Crop Restrictions

Rotational crop studies are not required for grapes, citrus, and pome fruit. The registrant submitted the results of confined and rotational crop studies. These studies are adequate to support the proposed use of fenpropathrin on head and stem Brassica and melons. No rotational crop restrictions or tolerances are required.

F. Endocrine Disruption

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

V. Conclusion

Therefore, the tolerance is established for residues of fenpropathrin in pome fruit (crop group 11) and grapes at 5.0 ppm; head and stem Brassica (crop group 5A) at 3.0 ppm; citrus fruit (crop group 10) at 2.0 ppm; melons (crop group 9A) at 0.5 ppm; and in the processed products citrus oil at 75 ppm, raisins at 10 ppm, and dried citrus pulp at 4.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300981 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 1, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office

of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300981, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action 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 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: February 17, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

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

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.466, by amending paragraph (a) by alphabetically adding the following entries to the table:

§ 180.466 Fenpropathrin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Brassica, head and stem, crop subgroup 5–A	3.0
* * * * *	
Citrus, dried pulp	4.0
Citrus, oil	75

Commodity	Parts per million
* * * * *	
Fruits, citrus, crop group 10	2.0
Fruits, pome, crop group 11	5.0
* * * * *	
Grapes	5.0
* * * * *	
Raisins	10.0
* * * * *	
Vegetable, cucurbit, melon, crop subgroup 9–A	0.5

* * * * *

[FR Doc. 00–5046 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300980; FRL–6493–2]

RIN 2070–AB78

Imidacloprid; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in or on corn, field fodder, forage, and grain. Gustafson, Incorporated requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996. The tolerance will expire on December 31, 2000.

DATES: This regulation is effective March 2, 2000. Objections and requests for hearings, identified by docket control number OPP–300980, must be received by EPA on or before May 1, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300980 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Peg Perreault, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5417; and e-mail address: Perreault.Peg@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	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 under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and hen 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–300980. 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.

II. Background and Statutory Findings

In the **Federal Register** of June 25, 1997 (62 FR 34269) (FRL–5719–6), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA of 1996 (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Gustafson, Incorporated, P.O. Box 660065, Dallas, TX 75255–0065. This notice included a summary of the petition prepared by Gustafson, Incorporated, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.472(a) be amended by establishing tolerances for combined residues of the insecticide imidacloprid, (1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as (1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine), in or on corn, field fodder at 0.2 parts per million (ppm), corn, field forage at 0.1 ppm, and corn, field grain at 0.05 ppm. The tolerances will expire on December 31, 2000. Time-limited tolerances are being established based on EPA's initial review of the crop field trial data for seed-treatment of field corn, which indicates that the data support the proposed tolerances for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety. The time-limited tolerances for field corn are being established until a full review of

the residue data is completed and permanent tolerances are established.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of imidacloprid on corn, field fodder, forage, and grain at 0.2, 0.1, and 0.05 ppm, respectively. EPA's assessment of the exposures and risks associated with establishing the tolerance was included in the preamble to two separate final rules on imidacloprid pesticide tolerances, published in the **Federal Register** on September 18, 1998 (63 FR 49837) (FRL–6027–1) and August 2, 1999 (64 FR 41804) (FRL–6090–2). The risk assessment supporting the tolerance actions in the August 2, 1999 **Federal Register** Notice also, assumed that tolerances would be established on corn, field fodder, forage, and grain at 0.2, 0.1, and 0.05 ppm, respectively. Accordingly, the analysis and findings in the August 2, 1999 preamble apply equally to the tolerances for corn, field fodder, forage, and grain being established by this final rule and EPA reaffirms those findings in promulgating this rule.

IV. Other Considerations

A. Metabolism in Plants and Animals

Data concerning the metabolism of imidacloprid in apples, potatoes, tomatoes, eggplant, cottonseed, field corn, ruminants and poultry have previously been submitted. The nature of imidacloprid residues in plants and animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated imidacloprid residue in plant (Bayer GC/MS Method 00200 and Bayer HPLC–UV Confirmatory Method 00357) and animal (Bayer GC/MS Method 00191) commodities. These methods have successfully completed EPA Tolerance Method Validation, and are awaiting publication in the Pesticide Analytical Manual II (PAM II). In the interim, these methods are available from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

Bayer Corporation has previously submitted adequate multiresidue method (MRM) recovery data for imidacloprid and its olefin, hydroxy, guanidine, and 6-chloronicotininc acid metabolites through FDA's Protocols A through E. Imidacloprid and its metabolites were not recoverable by these methods. These data have been forwarded to FDA and we expect them to be published in PAM, Vol I, Appendix I in a future update. Additional MRM recovery data are not required.

C. Magnitude of Residues

An initial review of the crop field trial data for seed-treatment of field corn support the proposed tolerances for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety. Time-limited tolerances for field corn are being established until a full review of the residue data is completed and permanent tolerances are established.

D. International Residue Limits

There are no established CODEX, Canadian or Mexican residue limits for imidacloprid in/on field corn fodder, forage, and grain. Thus, harmonization of the proposed tolerances with CODEX, Canada and Mexico is not an issue for these petitions.

E. Rotational Crop Restrictions

Data concerning the metabolism of imidacloprid in confined rotational crops was previously submitted. The nature of the residue in rotational crops is adequately understood and is nearly identical to that identified in the primary crops. The residue of concern in rotational crops is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent. Treated areas may be replanted with any crop specified on an imidacloprid label, or any crop for which a tolerance exists for imidacloprid, as soon as practical following the last application, with the exception of cereals, legumes, and safflower, which have a 30–day plant-back restriction. A 12–month plant-back restriction must be observed for crops not listed on an imidacloprid label and for crops for which no tolerances for imidacloprid have been established.

V. Conclusion

Therefore, tolerances are established for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, in or on corn, field fodder at 0.2 ppm, corn, field forage at 0.1 ppm, and corn, field grain at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

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1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

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A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action 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 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to

include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. 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 United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 15, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.472 is amended by alphabetically adding three entries to the table in paragraph (a) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation date
* * * * *		
Corn, field fodder	0.20	12/31/00
Corn, field forage	0.10	12/31/00
Corn, field grain	0.05	12/31/00
* * * * *		

* * * * *

[FR Doc. 00–5047 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

48 CFR Chapter 5

RIN 3090–AE90

General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is adopting as final, with changes, the interim rule published in the **Federal Register** at 64 FR 37200, July 9, 1999, the reissuance of the General Services Administration Acquisition Regulation (GSAR). GSA rewrote the GSAR in plain language, included only regulatory material, and removed internal agency guidance. GSA also updated the GSAR to reflect recent changes to the Federal Acquisition Regulation (FAR) The interim rule was effective September 1, 1999.

GSA is also issuing final regulations providing guidance on selection criteria for architect-engineer contracts.

DATES: Effective March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division, (202) 208–6726.

SUPPLEMENTARY INFORMATION:

A. Background

The GSAR, as reissued—

—Uses plain language to improve clarity and understanding.

—Reduces the amount of regulatory material.

—Eliminates internal operating procedures that do not have significant effect beyond GSA, or a significant cost or administrative impact on contractors or offerors.

—Eliminates guidance which merely implements or supplements the Federal Acquisition Regulation (FAR) without a significant cost or administrative impact on contracts or offerors, or an effect beyond GSA's internal operating procedures.

—Updates GSA rules for consistency with recent Federal Acquisition Regulation (FAR) changes.

GSA published and interim rule in the **Federal Register** on July 9, 1999 (64 FR 37200). One respondent submitted comments in response to the interim rule. GSA considered those comments in developing the final rule. The changes in this rule:

—Update references to the GSA Order on use of the credit card to reflect the new order issued by GSA on September 1, 1999, and updating related procedures. The changes include updating the clause at section 552.232–77 to reflect Federal Supply Service (FSS) requirements that FSS contractors accept payment by the Govermentwide commercial purchase card for orders that do not exceed the micropurchase threshold.

—Correct an error at section 515.408 in a reference to the clause to section 552.215–72.

—Update the warranty clause applicable to multiple award schedule contracts to apply to both domestic and overseas locations and deletes the clause applicable to international multiple award schedules to reflect updated Federal Supply Schedule programs.

—Correct a typographical error at section 552.209–70.

—Revise section 552.216–70 to eliminate a duplicated paragraph.

—Revise section 552.232–76 to clarify that electronic funds transfer

payments under acquisitions of leasehold interests in real property occur through the Automated Clearing House.

—Clarify protest procedures on exchange of information between the parties.

—Update section 552.247–71 to refer to common rates instead of tariffs. GSA also published a proposed rule in the **Federal Register** on August 17, 1999 (64 FR 44683) on selection criteria for architect-engineer contracts. No public comments were submitted on the proposed rule. The final rule clarifies the requirement to establish a significant production capability in the general geographical area of the project and makes editorial changes into plain language.

B. Executive Order 12866

This order was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

GSA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The GSAR rewrite adds guidance on disclosure and use of proprietary information when GSA will release proposals outside the Government for evaluation and provided a contract clause to ensure that evaluation contractors protect proposal information appropriately. The rewrite also adds GSA agency protest procedures. These procedures offer vendors an alternate forum which is quicker and less expensive than protests to the General Accounting Office or the Courts. The guidance on use of selection criteria for architect-engineer contracts eliminates unnecessary restrictions to competition in GSA's use of geographic limitations in the evaluation process for these contracts. The other revisions do not add any new requirements; but reduce the number of agency regulations, restate existing requirements in plain language, and provide consistency with the FAR. These revisions streamline GSA acquisition rules, provide greater flexibility, and promote understanding.

D. Paperwork Reduction Act

The reissued GSAR contains information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) which were approved previously by OMB and assigned the control numbers shown in section 501.106.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule under 5 U.S.C. 804. This rule was submitted to Congress and GAO under 5 U.S.C. 801.

List of Subjects in 48 CFR Chapter 5

Government procurement.

Interim Rule Adopted as Final With Changes

Accordingly, GSA adopts the interim rule reissuing 48 CFR Chapter 5, which was published in the **Federal Register** on July 9, 1999 (64 FR 37200), as final with the following changes:

1. The authority citation for 48 CFR Parts 513, 515, 532, 536, 546, and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 513—SIMPLIFIED ACQUISITION PROCEDURES

2. In section 513.302–70, revise paragraph (a) to read as follows:

513.302–7 Purchase order and related forms.

(a) See GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1), for forms required for purchase card actions.

* * * * *

PART 515—CONTRACTING BY NEGOTIATION

3. In section 515.408, revise paragraph (d) to read as follows:

515.408 Solicitation provisions and contract clauses.

* * * * *

(d) Insert the clause at 552.215–72, Price Adjustment—Failure to Provide Accurate Information, in solicitations and contracts under the MAS program.

* * * * *

PART 532—CONTRACT FINANCING

4. Revise sections 532.7002 and 532.7003 to read as follows:

532.7002 Solicitation requirements.

(a) In solicitations for supplies and services, except FSS schedule solicitations, request offerors to indicate if they will accept payment by Governmentwide commercial purchase card. Identify the card brand(s) under the GSA SmartPay program that may be used to make payments under the contract, on the cover page or in Section L of the solicitation.

(b) For FSS schedule contracts, identify the card brand(s) under the GSA SmartPay program that may be used to make payments under the contract in the contract award letter.

(c) For orders placed by GSA, you may authorize payment by Governmentwide commercial purchase card only for orders that do not exceed $100,000 (see GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1)).

(d) Consider requesting offerors to designate different levels for which they may accept payment by Governmentwide commercial purchase card, for example:

''If awarded a contract under this solicitation, the offeror agrees to accept payment by Governmentwide commercial purchase card for orders of:

—$2,500 or less

—$25,000 or less

—$50,000 or less

—$100,000 or less''

532.7003 Contract Clause.

(a) *Indefinite-delivery, indefinite-quantity (IDIQ) contracts other than Federal Supply Service.* Insert the clause at 552.232–77, Payment by Governmentwide Commercial Purchase Card, in IDIQ solicitations and contracts for supplies and services if the contract will provide for payment by Governmentwide commercial purchase card as an alternative method of payment for orders.

(b) *Federal Supply Service Contracts.* Use Alternate I of the clause at 552.232–77 for all FSS schedule solicitations and contracts. You may use the clause in other FSS IDIQ contract as appropriate.

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

5. Add subpart 536.6 to read as follows:

SUBPART 536.6—ARCHITECT-ENGINEER SERVICES

536.602 Selection of firms for architect-engineer contracts.

536.602–1 Selection criteria.

(a) FAR 36.602–1 requires that agencies include ''location in the general geographical area of the project and knowledge of locality of the project'' as one of several selection criteria.

(1) Do not use this evaluation factor as a minimum qualification requirement for determining whether a firm is eligible to compete for a proposed project.

(2) This factor must not exceed 5 percent of the total weight of all evaluation criteria. In order to receive maximum score for this factor, the

architect-engineer firm(s) must demonstrate that at least 35 percent of the architect-engineer contract services (based on the total contract price) will be accomplished within the geographical boundaries established for the project.

(3) Under an approved class deviation from FAR 36.602–1(a)(5), this factor does not apply to projects that the Chief Architect of GSA determines have national significance.

(b) The public announcement (Commerce Business Daily notice) for a proposed project should identify the general geographical area of the project by either:

(1) A radius in miles or other appropriate unit of measure.

(2) The Standard Metropolitan Statistical Area, county(ies), state(s) surrounding the project, or other appropriate geographic boundaries.

(c) Architect-engineer selections under the Design Excellence Program must apply the geographical evaluation criteria in the second phase.

(d) The public announcement (Commerce Business Daily notice) must provide the number of calendar days the architect-engineer of record has to establish a production capability within the general geographical area of the project. You may allow the architect-engineer of record up to 45 calendar days after contract award to establish this production capability.

PART 546—QUALITY ASSURANCE

6. In section 546.710, revise paragraph (b) to read as follows, remove paragraph (c), and redesignate paragraphs (d) and (e) as paragraphs (c) and (d) respectively:

546.710 Contract clauses.

* * * * *

(b) *Multiple award schedules.* Insert the clause at 552.246–73, Warranty—Multiple Award Schedule, in solicitations and contracts.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7.–9. Amend section 552.232–76 to revise the date and paragraph (b)(1) to read as follows:

552.232–76 Electronic Funds Transfer Payment.

ELECTRONIC FUNDS TRANSFER PAYMENT (MAR 2000)

* * * * *

(b) * * *

(1) The American Bankers Association 9-digit identifying number for Automated Clearing House (ACH) transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

* * * * *

10. Revised section 552.232–77 to read as follows:

552.232–77 Payment By Governmentwide Commercial Purchase Card.

PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (MAR 2000)

(a) Definitions. ''Governmentwide commercial purchase card'' means a uniquely numbered credit card issued by a contractor under GSA's Governmentwide Contract for Fleet, Travel, and purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

''Oral order'' means an order placed orally either in person or by telephone.

(b) At the option of the Government and if agreeable to the Contractor, payments of _____*__ or less for oral or written orders may be made using the Governmentwide commercial purchase card.

(c) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.

(d) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using a Government debit card will receive the applicable prompt payment discount. (End of clause)

* Enter amount not to exceed $100,000.

Alternate I (MAR 2000). For FSS schedule solicitations and contracts, replace paragraph (b) of the basic clause and add paragraph (c) as follows. Redesignate paragraphs (c) and (d) of the basic clause as (d) and (e) respectively.

(b) The Contractor must accept the Governmentwide commercial purchase card for payments equal to or less than the micro-purchase threshold (see Federal Acquisition Regulation 2.101) for oral or written orders under this contract.

(c) The Contractor and the ordering agency may agree to use the Governmentwide commercial purchase card for dollar amounts over the micro-purchase threshold, and the Government encourages the Contractor to accept payment by the purchase card. The dollar value of a purchase card action must not exceed the ordering agency's established limit. If the Contractor will not accept payment by the purchase card for an order exceeding the micro-purchase threshold, the Contractor must so advise the ordering agency within 24 hours of receipt of the order.

11. Amend section 552.233–70 to revise the clause date and paragraphs (h)(4) and (h)(5) to read as follows, and to remove paragraph (h)(6):

552.233–70 Protests Filed Directly with the General Services Administration.

PROTESTS FILED DIRECTLY WITH THE GENERAL SERVICES ADMINISTRATION (MAR 2000)

* * * * *

(h) * * *

(4) Except as provided in paragraph (5)(ii) below, the parties are encouraged, but not required, to exchange information submitted to the Agency Protest Official for GSA.

(5) If the agency makes a written response to the protest, the following filling requirements apply unless the deciding official approves other arrangements:

(i) The agency must file its response to the protest with the deciding official within five (5) days after the filing of the protest.

(ii) The agency must also provide the protester with a copy of the response on the same day it files the response with the deciding official. If the agency believes it needs to redact or withhold any information in the response from the protester, it must obtain the approval of the deciding official.

* * * * *

12. Revise section 552.246–73 to read as follows:

552.246–73 Warranty—Multiple Award Schedule.

WARRANTY—MULTIPLE AWARD SCHEDULE (MAR 2000)

(a) *Applicable to domestic locations.* Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the Contractor's commercial price list applies to this contract.

(b) *Applicable to overseas destinations.* Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the commercial price list applies to this contract, except as follows:

(1) The Contractor must provide, at a minimum, a warranty on all non-consumable parts for a period of 90 days from the date that the Government accepts the product.

(2) The Contractor must supply parts and labor required under the warranty provisions free of charge.

(3) The Contractor must bear the transportation costs of returning the products to and from the repair facility, or the costs involved with Contractor personnel traveling to The Government facility for the purpose of repairing the product onsite, during the 90-day warranty period.

552.246–74 [Removed]

(End of clause)

13. Remove and reserve section 552.246–74

14. Revise the prescription at section 552.246–75 to read as follows:

552.246–75 Guarantees.

As prescribed in 546.710(c), insert the following clause.

* * * * *

15. Revise the prescription at section 552.246–76 to read as follows:

552.246–76 Warranty of Pesticides.

As prescribed in 546.710(d), insert the following clause:

* * * * *

16. Amend section 552.247–71 to revise the clause date and paragraph (c)(2) to read as follows:

552.247–71 Diversion of Shipment Under f.o.b. Destination Contracts.

* * * * *

DIVERSION OF SHIPMENT UNDER F.O.B. DESTINATION CONTRACTS (MAR 2000)

* * * * *

(c) * * *

(2) If (i) shipments to the new destination are made by the Contractor's owned or leased trucks or (ii) shipments to the original destination were or would have been made by the Contractor's owned or leased trucks, the Government shall determine the adjustment by substituting a rate equal to 70 percent of the lowest applicable rate published in common carrier rates as of the date of shipment for the Contractor's actual rate or contemplated transportation costs.

* * * * *

Dated: February 18, 2000.

J. Les Davison,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 00–4699 Filed 3–1–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 022500B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of Atka mackerel total allowable catch (TAC) specified for the Central Aleutian District.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 26, 2000, until 1200 hrs, A.l.t., September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 2000 Harvest Specifications for Groundfish (65 FR 8282, February 18, 2000) established the first seasonal allowance of Atka mackerel TAC specified for the Central Aleutian District as 11,424 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of Atka mackerel TAC specified for the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 11,174 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

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

Classification

This action responds to the best available information recently attained from the fishery. It must be implemented immediately to prevent overharvesting the first seasonal allowance of Atka mackerel TAC specified for the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: February 25, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–4942 Filed 2–25–00; 4:15 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 42
Thursday, March 2, 2000

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 709

Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally-insured Credit Unions in Liquidation

AGENCY: National Credit Union Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) is publishing for notice and comment a proposed rule regarding the treatment by the NCUA Board (Board), as conservator or liquidating agent, of financial assets transferred by a federally-insured credit union to another party: in connection with a securitization; or in the form of a participation. The proposal also addresses the treatment by the Board, as conservator or liquidating agent, of agreements entered into by a federally-insured credit union to collateralize public funds. The proposal generally provides that the Board will not, by exercise of its statutory power to repudiate contracts, recover, reclaim, or recharacterize as property of the credit union or the liquidation estate financial assets that were transferred by the credit union to another party in connection with a securitization or in the form of a participation. The proposal also establishes that the Board will not seek to avoid an otherwise legally enforceable and perfected security interest in collateral for public funds solely because the collateral was not acquired contemporaneously with the approval and execution of the security agreement. The Board will also not seek to avoid a security interest solely because the collateral was changed, increased or subject to substitution from time to time.

DATES: Written comments must be received by the NCUA on or before April 3, 2000.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may also fax comments to (703) 518–6319. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Chrisanthy J. Loizos or Mary F. Rupp, Staff Attorneys, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Section 709.10

Under generally accepted accounting principles, a transfer of financial assets is accounted for as a sale if the transferor surrenders control over the assets. One of the conditions for determining whether the transferor has surrendered control is that the assets have been isolated from the transferor, i.e., put presumptively beyond the reach of the transferor, its creditors, a trustee in bankruptcy, or a receiver. This is known as the ''legal isolation'' condition.

Where the transferor is a federally-insured credit union for which the Board may be appointed conservator or liquidating agent, the issue arises whether financial assets transferred in connection with a securitization or in the form of a participation would be put beyond the reach of the Board as conservator or liquidating agent. The issue arises because of the Board's statutory authority to repudiate credit union contracts and, also, sections 207(b)(9) and 208(a)(3) of the Federal Credit Union Act (the Act) regarding the enforceability of agreements against the NCUA. 12 U.S.C. 1787(b)(9), 1788(a)(3). The specific issues are: whether the Board might exercise its authority to repudiate contracts, and avoid a transfer of financial assets in connection with a securitization or a participation to recover assets; and whether the Board, with respect to an agreement executed in relation to a transfer of financial assets in connection with a securitization or a participation, might assert the requirements of sections 207(b)(9) and 208(a)(3) of the Act. Those sections provide, that, to be enforceable against the NCUA, any agreement that tends to diminish or defeat the NCUA's interest in an asset must be executed contemporaneously with the acquisition of the asset by the credit union (the ''contemporaneous'' requirement).

The Federal Deposit Insurance Corporation (FDIC) published a Notice of Proposed Rulemaking, 64 FR 48968, Sept. 9, 1999, to resolve the issues raised above in the Statement of Financial Accounting Standards No. 125 (SFAS 125), issued by the Financial Accounting Standards Board. FDIC addressed whether its statutory authority to repudiate contracts under section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) would prevent a transfer of financial assets by an insured depository institution in connection with a securitization or in the form of a participation from satisfying the ''legal isolation'' condition of SFAS 125. The Federal Credit Union Act contains provisions substantially similar to 12 U.S.C. 1821(e) that apply when the Board is appointed conservator or liquidating agent for a federally-insured credit union. *See* 12 U.S.C. 1787, 1788. As such, this preamble and proposed rule track the language of the FDIC's proposed rule, 12 CFR 360.6.

Under 12 U.S.C. 1787(c)(1), the Board, when acting as conservator or liquidating agent of any federally-insured credit union, has the power to disaffirm or repudiate any contract or lease (i) to which the credit union is a party; (ii) the performance of which the conservator or liquidating agent, in the conservator's or liquidating agent's discretion, determines to be burdensome; and (iii) the disaffirmance or repudiation of which the conservator or liquidating agent determines, in the conservator's or liquidating agent's discretion, will promote the orderly administration of the credit union's affairs. Repudiation of a contract relieves the Board from performing any unperformed obligations remaining under the contract. Repudiation also entitles the other party to the contract to a claim for damages, which are limited by statute to actual direct compensatory damages determined as of the date of the appointment of the liquidating agent or conservator. *See* 12 U.S.C. 1787(c)(3).

Under sections 207(b)(9) and 208(a)(3) of the Act, no agreement that tends to diminish or defeat the NCUA's interest in an asset acquired from a federally-insured credit union is enforceable against the NCUA unless such

agreement meets certain requirements. One of those requirements is that the agreement be executed by the credit union and any person claiming an adverse interest thereunder contemporaneously with the acquisition of the asset by the credit union.

In order for a transfer of financial assets by a federally-insured credit union in connection with a securitization or in the form of a participation to be accounted for as a sale, the proposed rule provides that the Board, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1787(c), will not reclaim, recover, or recharacterize as property of the credit union or the liquidation estate any financial assets transferred by a federally-insured credit union to another party in connection with a securitization or in the form of a participation. Although the repudiation of a securitization or participation will not affect transferred financial assets, repudiation will excuse the Board from performing any continuing obligations imposed by the securitization or participation. If the Board, in order to terminate such continuing obligations or duties, seeks to disaffirm or repudiate an agreement or contract under which a federally-insured credit union has transferred financial assets to another party in connection with a securitization or a participation, the Board will not seek to reclaim, recover, or recharacterize as property of the credit union or the liquidation estate such financial assets.

The proposed rule applies only to those securitizations or participations in which the transfer of financial assets meets all of the conditions for sale accounting treatment under generally accepted accounting principles, other than the ''legal isolation'' condition, which the proposed rule is intended to address. While the proposed rule enables a credit union to meet the ''legal isolation'' condition, it does not replace the credit union management's responsibility to establish evidence supporting the isolation criterion of SFAS 125.

As part of the definition of ''participation,'' the proposed rule provides that a participation must be ''without recourse,'' that is, the participation must not be subject to any agreement that requires the lead institution to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation. The term ''without recourse'' does not, however, preclude the lead institution from retaining a subordinated interest in the participated obligation, against which losses are initially allocated.

The proposed rule does not apply unless the federally-insured credit union received adequate consideration for the transfer of financial assets at the time of the transfer. Also, the documentation effecting the transfer of financial assets must reflect the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

The proposed rule will not waive, limit or otherwise affect the rights or powers of the Board to take any action or to exercise any power not specifically limited by this section. This includes any rights, powers or remedies of the Board regarding transfers taken in contemplation of the credit union's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of the credit union, or that is a fraudulent transfer under applicable law.

The proposed rule further provides that the Board will not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a federally-insured credit union solely because such agreement does not meet the ''contemporaneous'' requirement of sections 207(b)(9) and 208(a)(3) of the Act. 12 U.S.C. 1787(b)(9), 1788(a)(3).

The Board intends the proposed rule to apply to securitizations and participations engaged in by federally-insured credit unions while the rule is in effect, even if the rule is later amended or repealed. Paragraph (g) of the proposed rule provides that the rule will be effective unless repealed by the NCUA upon 30 days notice and opportunity for comment provided in the **Federal Register**. This paragraph also provides that any repeal or amendment of the rule by the NCUA will not apply to any transfer of financial assets made in connection with a securitization or participation that was in effect before such repeal or amendment. As a result of paragraph (g), where a transfer of financial assets in connection with a securitization or in the form of a participation is made by a credit union and the securitization or participation was in effect before any repeal or amendment of the rule by the NCUA, such transfer will continue to satisfy the legal isolation requirement notwithstanding the repeal or amendment.

Section 709.11

The Act authorizes federally-insured credit unions to become depositories of public money. 12 U.S.C. 1767 and 12 U.S.C. 1789a. Federal credit unions may receive payments, representing equity, on shares, share certificates and share draft accounts from nonmember units of federal, state, local or tribal governments and political subdivisions as enumerated in section 207(k)(2)(A) of the Act. 12 U.S.C. 1757(6). As a public depository, a federal credit union may pledge any of its assets to secure the payment of the public funds. 12 U.S.C. 1767(b).

NCUA received an inquiry as to the enforceability of security interests for public funds in federally-insured credit unions when the granting of security interests to protect public funds is authorized or required by state or federal law. On April 30, 1993, the FDIC addressed this precise issue in its ''Statement of Policy Regarding Treatment of Security Interests After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver.'' The FDIC found that, provided the following five assumptions were met, when acting as conservator or receiver, it would not seek to avoid an otherwise legally enforceable and perfected security interest solely because the security agreement granting or creating such security interest did not meet the ''contemporaneous'' requirements of sections 11(d)((), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act.

In its analysis, FDIC assumed the following: (1) the agreement was undertaken in the ordinary course of business, not in contemplation of insolvency, and with no intent to hinder, delay or defraud the depository institution or its creditors; (2) the secured obligation represented a bona fide and arm's length transaction; (3) the secured party or parties were not insiders or affiliates of the depository institution; (4) the grant or creation of the security interest was for adequate consideration; and (5) the security agreement evidencing the security interest was in writing, approved by the depository institution's board of directors or loan committee (which approval is reflected in the minutes of a meeting of the board of directors or committee) and has been, continuously from the time of its execution, an official record of the depository institution. 58 FR 16833, March 31, 1993. Congress enacted the tenor of FDIC's policy statement in section 317 of the Riegle Community Development and Regulatory Improvement Act of 1994. 12 U.S.C. 1823(e)(2).

The Board believes it should limit its extraordinary authority as a conservator or liquidating agent with special provisions for security interests related to public funds. This will allow

federally-insured credit unions to offer governmental depositors the same protections the Federal Deposit Insurance Act provides them for deposits in banks. As such, the proposed rule establishes that the Board, acting as conservator or liquidating agent for a federally-insured credit union, will not seek to avoid an otherwise legally enforceable and perfected security interest in collateral for public funds solely because the security agreement granting or creating such security interest does not meet the contemporaneous requirement of sections 207(b)(9) and 208(a)(3) of the Federal Credit Union Act. The Board will not avoid a security interest because the collateral was not acquired contemporaneously with the approval and execution of the security agreement or because the collateral changed, increased or was subject to substitution from time to time.

Under NCUA's Interpretive Ruling and Policy Statement 87–2, the Board's general policy is to provide a 60-day comment period for a proposed regulation. In this case, the Board believes that a 30-day comment period will be adequate and is appropriate given that the proposal has the effect of providing greater flexibility for federally-insured credit unions.

Regulatory Procedures

Paperwork Reduction Act

NCUA has determined that the proposed amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small entities (primarily those under $1 million in assets). For purposes of this analysis, credit unions under $1 million in assets will be considered small entities. As of June 30, 1999, there were 1,690 such entities with a total of $807.3 million in assets, with an average asset size of $0.5 million. These small entities make up 15.6 percent of all credit unions, but only 0.2 percent of all credit union assets.

The proposed rule addresses the manner in which the Board will enforce its rights as a conservator or liquidating agent when evaluating financial assets transferred during a securitization or participation, or reviewing the collateralization of public funds. The proposed rule does not impose additional reporting or recordkeeping burdens that are not already a function of entering into such transactions. Therefore, the Board has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, will apply to all federally-insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 709

Credit unions, Liquidations.

By the National Credit Union Administration Board on February 24, 2000.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, the NCUA proposes to amend 12 CFR part 709 as follows:

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY-INSURED CREDIT UNIONS IN LIQUIDATION

1. The authority citation for part 709 is revised to read as follows:

Authority: 12 U.S.C. 1757; 12 U.S.C. 1766; 12 U.S.C. 1767; 12 U.S.C. 1786(h); 12 U.S.C. 1787; 12 U.S.C. 1788; 12 U.S.C. 1789; 12 U.S.C. 1789a.

2. Amend § 709.0 by revising the first sentence to read as follows:

§ 709.0 Scope.

The rules and procedures set forth in this part apply to charter revocations of federal credit unions under 12 U.S.C. 1787(a)(1)(A), (B), the involuntary liquidation and adjudication of creditor claims in all cases involving federally-insured credit unions, the treatment by the Board as conservator or liquidating agent of financial assets transferred in connection with a securitization or participation, and the treatment by the Board as conservator or liquidating agent of public funds held by a federally-insured credit union. * * *

3. Add § 709.10 to part 709 to read as follows:

§ 709.10 Treatment by conservator or liquidating agent of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* (1) *Beneficial interest* means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

(2) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(3) *Legal isolation* means that transferred financial assets have been put presumptively beyond the reach of the transferor, its creditors, a trustee in bankruptcy, or a receiver, either by a single transaction or a series of transactions taken as a whole.

(4) *Participation* means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the ''lead,'' to a buyer, known as the ''participant,'' without recourse to the lead, under an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation.

(5) *Securitization* means the issuance by a special purpose entity of beneficial interests:

(i) The most senior class of which at time of issuance is rated in one of the four highest categories assigned to long-

term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations; or

(ii) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the Securities Act of 1933, as amended, or in transactions exempt from registration under such Act under 17 CFR 230.901 through 230.905 (Regulation S) thereunder (or any successor regulation).

(6) *Special purpose entity* means a trust, corporation, or other entity with a distinct standing at law separate from the federally-insured credit union that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The Board, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1787(c), will not reclaim, recover, or recharacterize as property of the credit union or the liquidation estate any financial assets transferred to another party by a federally-insured credit union in connection with a securitization or participation, provided that a transfer meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the ''legal isolation'' condition addressed by this section.

(c) Paragraph (b) of this section will not apply unless the federally-insured credit union received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

(d) Paragraph (b) of this section will not be construed as waiving, limiting, or otherwise affecting the power of the Board, as conservator or liquidating agent, to disaffirm or repudiate any agreement imposing continuing obligations or duties upon the federally-insured credit union in conservatorship or the liquidation estate.

(e) Paragraph (b) of this section will not be construed as waiving, limiting or otherwise affecting the rights or powers of the Board to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the Board regarding transfers taken in contemplation of the credit union's insolvency or with the intent to hinder, delay, or defraud the credit union or the creditors of such credit union, or that is a fraudulent transfer under applicable law.

(f) The Board will not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a federally-insured credit union solely because such agreement does not meet the ''contemporaneous'' requirement of sections 207(b)(9) and 208(a)(3) of the Federal Credit Union Act.

(g) This section may be repealed by the NCUA upon 30 days notice and opportunity for comment provided in the **Federal Register**, but any such repeal or amendment will not apply to any transfers of financial assets made in connection with a securitization or participation that was in effect before such repeal or modification. For purposes of this paragraph, a securitization would be in effect on the earliest date that the most senior level of beneficial interests is issued, and a participation would be in effect on the date that the parties executed the participation agreement.

4. Add § 709.11 to part 709 to read as follows:

§ 709.11 Treatment by conservator or liquidating agent of collateralized public funds.

An agreement to provide for the lawful collateralization of funds of a federal, state, or local governmental entity or of any depositor or member referred to in section 207(k)(2)(A) of the Act will not be deemed to be invalid under section 208(a)(3) of the Act solely because such agreement was not executed contemporaneously with the acquisition of collateral or with any changes in the collateral made in accordance with such agreement.

[FR Doc. 00–4852 Filed 3–1–00; 8:45 am]

BILLING CODE 7535–01–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB37

Exemption for Commodity Pool Operators With Respect to Offerings to Qualified Eligible Participants; Exemption for Commodity Trading Advisors With Respect to Advising Qualified Eligible Clients

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing to revise Commission Rule 4.7 (''Proposal'').[1] Rule 4.7 provides a simplified regulatory framework for commodity pool operators (''CPOs'') operating commodity pools consisting of certain highly accredited pool participants, termed ''qualified eligible participants'' (''QEPs''), and for commodity trading advisors (''CTAs'') directing or guiding the commodity interest trading accounts of certain highly accredited clients, termed ''qualified eligible clients'' (''QECs''). The Proposal would revise the rule both substantively and technically.

The proposed substantive revisions are intended to make Rule 4.7 available to more CPOs and CTAs and under more situations, by bringing within the scope of the rule those additional persons who the Commission now believes should be included in the QEP and QEC definitions. The Proposal would add, among others, the following persons to the existing QEP and QEC definitions: Principals of the registered investment professionals currently defined as QEPs and QECs; certain registered securities investment advisers and their principals; ''qualified purchasers'' and ''knowledgeable employees'' as those terms are defined under the federal securities laws; certain employees of pools, CPOs and CTAs and certain of those employees' immediate family members; and trusts whose advisors and settlors are QEPs or QECs. In addition, the Proposal would make it easier for certain charitable organizations, trusts and collective investment vehicles to be QEPs and QECs, and, under certain circumstances, it would include persons who are not ''United States persons'' in the QEC definition. Certain of the proposed technical revisions, *i.e.,* those which would reorganize the rule, are intended

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

to facilitate a determination of whether a person is (or is not) a QEP or a QEC. Other proposed technical revisions would conform various references in the existing rule to those in the proposed rule.

In light of the breadth of the proposed revisions, the Commission is publishing for comment in this release the entire text of Rule 4.7 as it would appear if the Commission's proposed amendments were adopted. The Commission also is including in this release a chart that compares the provisions of the proposed rule with the provisions of the existing rule.

DATES: Comments must be received on or before May 1, 2000.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to ''Proposed Amendments to Rule 4.7.''

FOR FURTHER INFORMATION CONTACT: Barbara Stern Gold, Assistant Chief Counsel, or Helene D. Schroeder, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Telephone: (202) 418–5450.

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I. Background

A. Regulation of CPOs and CTAs Under the Commodity Exchange Act

Section 4m(1) of Commodity Exchange Act (the ''Act'') [2] requires each person who comes within the definition of the term ''commodity pool operator'' in Section 1a(4) of the Act [3] or ''commodity trading advisor'' in Section 1a(5) of the Act [4] to register with the Commission as a CPO or CTA, respectively, or to satisfy the requirements for exemption from such registration.[5] Part 4 of the Commission regulations [6] relates to the operations and activities of CPOs and CTAs. Part 4 includes disclosure, reporting and recordkeeping requirements for CPOs (Rules 4.21 through 4.26) and disclosure and recordkeeping requirements for CTAs (Rules 4.31 through 4.36). In addition, regardless of registration status, Rules 4.20 and 4.30 prohibit certain activities by CPOs and CTAs, respectively, and Rule 4.41 sets forth certain advertising requirements for CPOs, CTAs and the principals thereof.

The Commission has endeavored to construct a regulatory framework for CPOs and CTAs that avoids unnecessary burdens while, at the same time, maintains customer protection. From time to time the Commission has refined that framework as appropriate to respond to changing market conditions and to simplify and to streamline the regulatory structure without creating regulatory gaps.[7]

B. Rule 4.7

In 1992, the Commission adopted Rule 4.7 as part of the Commission's ongoing program for review of its rules.[8] Rule 4.7(a) provides an exemption from certain disclosure, reporting and recordkeeping requirements for registered CPOs in connection with their operation of commodity pools whose participants are QEPs. The exemption provides relief from all of the specific disclosures required by Rules 4.21 and 4.24 through 4.26 and streamlines the reporting and recordkeeping requirements of Rules 4.22 and 4.23, respectively. In proposing Rule 4.7(a), the Commission stated that it had the dual objective, consistent with its customer protection role, of:

> (1) Reducing unnecessary regulatory prescriptions for CPOs offering pool participations only to persons who, based upon the qualifying criteria in the proposed rule, do not appear to need the full protections offered by the part 4 framework; and (2) coordinating its rules with those of the [Securities and Exchange Commission] applicable to private offerings exempt from registration pursuant to Section 4(2) of the Securities Act so that most qualifying offerings may operate under an exemption from otherwise applicable requirements of both the Commodity Exchange Act and the securities laws. [9]

Under Rule 4.7(a), however, a registered CPO operating a pool for which it has claimed Rule 4.7 relief (''exempt pool'') remains subject to all other applicable requirements of the Act and the Commission's regulations issued thereunder with respect to the exempt pool and any other pool the CPO operates or intends to operate.[10] For example, it remains subject to the antifraud provisions of Sections 4b and 4*o* of the Act,[11] the prohibited activities and advertising provisions applicable to CPOs in Rules 4.20 and 4.41, respectively, and the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations. Moreover, if a CPO distributes an offering memorandum in connection with soliciting participations in an exempt pool, the memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading.[12]

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[2] 7 U.S.C. 6m(1) (1994).

[3] 7 U.S.C. 1a(4) (1994).

[4] 7 U.S.C. 1a(5) (1994).

[5] Rule 4.13 provides exemption from CPO registration for the persons specified therein. Section 4m(1) of the Act, 7 U.S.C. 6m(1) (1994), and Rule 4.14 provide exemption from CTA registration for the persons specified therein.

[6] Part 4 includes Rules 4.1–4.41.

[7] *See,* e.g., Rules 4.5, 4.12(b) and 4.14(a)(8), which provide exceptions from registration or particular Part 4 requirements based upon, among other things, the applicability of another federal regulatory framework to the CPO or CTA. Rule 4.5 was published at 50 FR 15868 (Apr. 23, 1985); Rules 4.12(b) and 4.14(a)(8) were published at 52 FR 41975 (Nov. 2, 1987).

[8] 57 FR 34853 (Aug. 7, 1992). The Commission made certain technical, non-substantive amendments to Rule 4.7 in 1995. See 60 FR 38146, 38182 (July 25, 1995). These amendments were necessary to conform certain of the references in Rule 4.7 to other Part 4 rules the Commission had renumbered in connection with revising the disclosure rules generally applicable to CPOs and CTAs.

[9] 57 FR 3148, 3150–51 (Jan. 28, 1992).

[10] Rule 4.7(a)(4).

[11] 7 U.S.C. 6b and 6*o* (1994).

[12] Rule 4.7(a)(2)(i)(A).

Rule 4.7(b) provides similar relief from the specific disclosure requirements of Rules 4.31 and 4.34 through 4.36 and recordkeeping requirements of Rule 4.33 to registered CTAs who direct or guide the commodity interest trading accounts of QECs (''exempt accounts''). In proposing Rule 4.7(b), the Commission stated that its rationale ''is analogous to that for proposing relief for CPOs, *i.e.,* that QEPs are sophisticated investors who have the financial ability and experience necessary to understand the risks of futures trading and to obtain the information they require.'' [13]

Under Rule 4.7(b), a CTA that has claimed Rule 4.7 relief with respect to a QEC likewise remains subject to all other applicable requirements of the Act and the Commission's regulations with respect to the QEC and any other client to which the CTA provides or intends to provide commodity interest trading advice.[14] Similarly, if a CTA delivers a brochure or other disclosure statement to QECs, the brochure or statement must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading.[15]

C. Developments Subsequent to the Adoption of Rule 4.7

Subsequent to the adoption of Rule 4.7, and consistent with the purposes of the rule, Commission staff has permitted a CPO to treat as a QEP and a CTA to treat as a QEC certain persons who did not meet the specified criteria of the rule. Various of these letters are cited infra at Part III.

In addition, in 1996, Congress enacted the National Securities Markets Improvement Act of 1996 (''NSMIA'').[16] Many collective investment vehicles trade both securities and commodity interests, and absent an exemption, they are subject to registration as an investment company under the Investment Company Act of 1940 (the ''ICA'') and their operators are subject to registration as a CPO under the Act.[17] Among other things, NSMIA added Section 3(c)(7) to the ICA [18] thereby providing an additional exemption from the definition of the term ''investment company'' under the ICA with respect to funds comprised exclusively of qualified purchasers (''QPs''). NSMIA also directed the Securities and Exchange Commission (''SEC'') to promulgate rules that would permit ownership by knowledgeable employees of the securities of the issuer (or affiliate) without loss of the issuer's definitional exemption under Section 3(c)(1) [19] or 3(c)(7) of the ICA. In 1997, the SEC adopted Rule 3c–5 under the ICA,[20] which defines the term ''knowledgeable employee.'' [21]

Based upon staff's experience in administering Rule 4.7 and taking into account these recent developments in the federal securities laws, the Commission is proposing to expand the QEP and QEC definitions, which would have the effect of permitting registered CPOs and CTAs to claim relief in additional circumstances under Rule 4.7. In taking this action, the Commission has been guided by the purposes of Rule 4.7. As stated above, with respect to CPOs, these purposes are to: (1) Reduce unnecessary regulatory burdens with respect to persons who appear not to need the full protections of the Part 4 framework; and (2) coordinate the Commission's rules with certain federal securities laws.[22] As for CTAs, the rationale for relief ''is analogous to that for * * * CPOs, *i.e.,* that QEPs are sophisticated investors who have the financial ability and experience necessary to understand the risks of futures trading and to obtain the information they require.'' [23]

The Commission also is proposing to reorganize Rule 4.7. In light of the breadth of the proposed actions, the Commission is publishing in this release the entire text of Rule 4.7 as it would appear if the proposed rule amendments were adopted. Moreover, to assist interested persons in providing comments on the Proposal, the Commission is including in this release a chart that compares the provisions of the proposed rule with the provisions of the existing rule. This chart is set forth below at Part IV.

II. Proposed Technical Revisions: Reorganization

A. Organization of Existing Rule 4.7

Commission staff's experience in administering Rule 4.7 has been that, as the rule currently is organized, CPOs and CTAs frequently have experienced difficulties in determining whether a particular person is a QEP or a QEC. Accordingly, the Commission is proposing to reorganize Rule 4.7 to facilitate these determinations.

Existing Rule 4.7 is divided into three paragraphs. Paragraph (a), captioned ''Relief for commodity pool operators,'' contains provisions relating to the definition of a QEP, the relief a CPO may claim under Rule 4.7, the notice a CPO must file to claim exemption under Rule 4.7 and the effect the filing of the notice has on the CPO's other obligations under the Act and other provisions of the Commission's rules.[24] Paragraph (b), captioned ''Relief for commodity trading advisors,'' contains similar provisions for CTAs. [25] Paragraph (c), captioned ''Insignificant deviations from a term, condition or requirement of Rule 4.7,'' contains provisions relating to a failure to comply with Rule 4.7. Persons have found determining the availability of relief under Rule 4.7 difficult at times because of, among other things, the multiple definitional criteria and the manner in which the text is subdivided under the existing organization.

B. Proposed Reorganization

Under the Proposal, Rule 4.7 would be reorganized into four paragraphs. Proposed paragraph (a), which would be captioned ''Definitions,'' would contain all of the definitions under Rule 4.7, including both the QEP and QEC definitions. Proposed paragraph (b), which would be captioned ''Relief for commodity pool operators,'' would contain the other existing provisions applicable to CPOs (relief, notice and effect).[26] Proposed paragraph (c), which would be captioned ''Relief for

[13] 57 FR at 3151.

[14] Rule 4.7(b)(4).

[15] Rule 4.7(b)(2)(i)(A).

[16] Pub. L. No. 104–290, 110 Stat. 3416 (codified as amended in scattered sections of 15 U.S.C. and 29 U.S.C.).

[17] See, *e.g.,* Peavey Commodity Futures Funds I, II, III [1983–1984 Transfer Binder], Fed. Sec. L. Rep. (CCH) ¶ 77,511 (June 2, 1983). In discussing certain recent amendments to the federal securities laws concerning the jurisdiction of the SEC and the Commission, staff of the SEC's Division of Investment Management stated:

[A]n entity investing in [futures on certain securities or options on such futures] is not subject to the jurisdiction of the SEC under the Investment Company Act of 1940 unless such entity is otherwise an investment company under the Investment Company Act of 1940. (Emphasis in original.)

Id. at 78,651.

[18] 15 U.S.C. 80a–3(c)(7) (Supp. III 1997). Section 3(c)(7) is further discussed infra at Part III. B.2.c.

[19] 15 U.S.C. 80a–3(c)(1) (1994 & Supp. III 1997). Section 3(c)(1) of the ICA exempts from the definition of investment company any issuer that is not making and does not propose to make a public offering of its securities whose outstanding securities (other than short-term paper) are owned by not more than 100 beneficial owners.

[20] 17 CFR 270.3c–5 (1999).

[21] See 62 FR 17512 (Apr. 9, 1997). According to the SEC, Congress' purpose in directing the SEC to adopt this provision ''appears to be to allow privately offered funds to offer persons who participate in the funds' management the opportunity to invest in the fund as a benefit of employment.'' Id. at 17514 n.22.

[22] See 57 FR at 3150–51.

[23] 23 Id. at 3151.

[24] Rules 4.7(a)(1), (2), (3) and (4), respectively.

[25] Rules 4.7(b)(1), (2), (3) and (4), respectively.

[26] Existing paragraphs (a)(2), (a)(3) and (a)(4) would be redesignated as paragraphs (b) and (b)(1), (b)(2) and (b)(3), respectively, with references to existing paragraphs of Rule 4.7 being conformed to refer to the proposed paragraphs.

commodity trading advisors,'' would contain the other existing provisions applicable to CTAs.[27] Proposed paragraph (d), which would be captioned ''Insignificant deviations from a term, condition or requirement of Rule 4.7,'' would contain the text of existing paragraph (c).[28]

Proposed paragraph (a)(1) would contain the general definitions that would be used throughout Rule 4.7. Proposed paragraphs (a)(2) and (a)(3) would contain the QEP and QEC definitions, respectively, with each of those paragraphs being divided into persons who are QEPs or QECs irrespective of the Portfolio Requirement[29] and persons who must satisfy the Portfolio Requirement to be QEPs or QECs.

The Commission believes that this proposed reorganization will be of great assistance to CPOs and CTAs in determining the availability of Rule 4.7 to them.

III. Proposed Substantive Revisions: Section-by-Section Analysis

As stated above, paragraph (a) would contain all of the definitions employed in Rule 4.7. To assist CPOs and CTAs in their reading of this paragraph, the introductory text of this paragraph would explain that paragraph (a)(1) contains general definitions, paragraph (a)(2) defines the term ''qualified eligible participant'' and paragraph (a)(3) defines the term ''qualified eligible client.'' The proposed introductory text also would make clear, as existing introductory text now does, that these definitions are ''for the purposes of this section,'' *i.e.,* for the purposes of Rule 4.7 only.

A. General Definitions: Proposed Paragraphs (a)(1)(i) Through (vi)

Proposed paragraph (a)(1) would contain general definitions, *i.e.,* those other than the QEP and QEC definitions, which would be set forth alphabetically. Certain of the rules in this paragraph, those defining ''exempt account'' and ''exempt pool,''[30] would be taken intact from existing text,[31] as would the rule defining ''United States.''[32] Other rules in this paragraph also would be taken from existing text, but they would have certain technical, non-substantive revisions made to them. These rules would define the terms ''Non-United States person''[33] and ''Portfolio Requirement.''[34]

The term ''Portfolio Requirement'' would be set forth in two parts and would be taken intact from existing text, except that the introductory text would contain certain technical revisions necessary as a result of the proposed reorganization of Rule 4.7. The first part, (A), would pertain to QEPs and the second part, (B), would pertain to QECs. The need for, in effect, two separate definitions of ''Portfolio Requirement'' is due to differences in activities between the two categories of registrants for whom Rule 4.7 provides relief: CPOs operate pools and sell participations therein, whereas CTAs provide advice and open trading accounts for clients. In proposing the portfolio requirement, the Commission explained that using the ''accredited investor'' definition in Rule 501 under the Securities Act of 1933 (''Securities Act''), 17 CFR 230.501 (1999), as a foundation, the Commission intended to define categories of QEPs and QECs based upon objective indicia that persons—

> possess either the investment expertise and experience necessary to understand the risks involved, as evidenced by the registered status of certain investment professionals [discussed at Part III.B.2.a, infra, who need not satisfy the portfolio requirement to be defined as a QEP or a QEC] or have an investment portfolio of a size sufficient to indicate that the [person] has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risks of their investments.[35]

The remaining provision in this paragraph would be entirely new. It would be the definition of the term ''affiliate'' of a specified person or a person ''affiliated'' with the specified person.[36] This definition is being proposed in furtherance of the Commission's goals of providing relief under Rule 4.7 to appropriate persons and of harmonizing its rules with those of the SEC. Specifically, the Commission is proposing that for the purposes of Rule 4.7, an ''affiliate'' or a person ''affiliated'' with a specified person means ''a person that directly or indirectly through one or more persons, controls, is controlled by, or is under common control with the specified person.''[37] The proposed definition is based upon the ''affiliate'' definition in Rule 501 of Regulation D under the Securities Act of 1933 (''Securities Act'')[38] and the ''affiliated person'' definition in Section 2(a)(3)(C) of the ICA.[39] As stated above, when it adopted Rule 4.7 the Commission used the ''accredited investor'' definition in Rule 501 under Regulation D as a foundation for determining the persons who would come within the QEP and QEC definitions. As also stated above, the Commission is now proposing amendments to the QEP and QEC definitions based upon, among other things, certain amendments to the ICA. Accordingly, the Commission believes that these two sources provide appropriate criteria for the purposes of this rule proposal.[40]

B. Persons Who Are QEPs and QECs Irrespective of the Portfolio Requirement: Proposed Paragraphs (a)(2)(i)(A) Through (L) for CPOs and (a)(3)(i)(A) Through (F) for CTAs

1. Summary Overview of the Proposed Revisions

Proposed paragraphs (a)(2)(i) and (a)(3)(i) would include in the QEP and QEC definitions, respectively, persons who qualify as QEPs and QECs irrespective of whether they satisfy the Portfolio Requirement. Some of these definitions would be based upon

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[27] Existing paragraphs (b)(2), (b)(3) and (b)(4) would be redesignated as paragraphs (c) and (c)(1), (c)(2) and (c)(3), respectively, also with conforming references.

[28] The text of proposed paragraph (d) similarly contains conforming references.

[29] The term ''Portfolio Requirement,'' which is not separately defined in existing Rule 4.7, would be defined in proposed paragraphs (a)(1)(v)(A) for QEPs and (a)(1)(v)(B) for QECs. See infra at Part III.A. These definitions would be taken from existing text.

[30] Proposed Paragraphs (a)(1)(ii) and (a)(1)(iii), respectively.

[31] Existing paragraphs (b)(1)(i) and (a)(1)(i), respectively.

[32] Proposed Paragraph (a)(1)(vi), which would be taken from existing paragraph (a)(1)(ii)(C).

[33] Proposed paragraph (a)(1)(iv). Existing paragraph (a)(1)(ii)(C) defines as a QEP ''a person that is not a United States person'' and lists those persons who are not considered to be ''United States persons.''

[34] Proposed paragraph (a)(1)(v). The portfolio requirements for QEPs and QECs currently are set forth in existing paragraphs (a)(1)(ii)(B)(1)(i) through (iii) and (b)(1)(ii)(B)(1)(i) through (iii), respectively.

[35] 51 FR at 3151–52.

[36] Proposed paragraph (a)(1)(i). As discussed *infra* at Part III.B.2.e., the Proposal would provide that certain affiliates of CPOs and CTAs are QEPs and QECs, respectively. See, *e.g.,* CFTC Staff Letter No. 98–35 [1996–1998 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 27,329 (May 12, 1998) (CPO permitted to treat as QEPs the employees of its affiliate); CFTC Staff Letter No. 98–10, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,261 (Feb. 5, 1998) (CPO permitted to treat as QEPs the principals of an affiliate of the CPO).

[37] See, *e.g.*, CFTC Staff Letter No. 98–10 at 46,144, n.2 (CPO and its affiliate were related by common ownership in that they were both owned by the same persons).

[38] 17 CFR 230.501(b) (1999).

[39] 15 USC 80a–2(a)(3)(C) (1994). See also *infra* at Part III.B.2.d for the text of the definition of the term ''affiliated person.''

[40] In making this proposal, the Commission considered the alternative criteria included in the definition of ''affiliated person'' in the ICA, *i.e.,* in Sections 2(a)(3)(A), (B), (D) and (E), and in particular, criteria such as percentage of ownership. It decided that for the purposes of Rule 4.7, ''control'' is a better gauge of affiliation and further, that an arbitrary ownership threshold might be too restrictive for the purposes of the rule.

existing text and others would be entirely new. The introductory text that would apply to these definitions would be taken from existing text.[41]

With respect to QEPs in particular, the Proposal would retain the four classes of investment professionals currently defined as QEPs, and it also would include their principals as QEPs.[42] Entirely new rules would include in the QEP definition such persons as investment advisers, qualified purchasers, knowledgeable employees, certain other employees, family members of persons involved with the pool, certain trusts, and certain organizations within the meaning of Section 501(c)(3) of the Internal Revenue Code (''Section 501(c)(3) Organizations'').[43]

Other rules, which would include in the QEP definition Non-United States persons and entities in which all of the unit owners or participants are QEPs, would be based upon existing text. Currently, the requirement that these persons be QEPs for a CPO to claim relief under Rule 4.7 is not qualified by a ''who the commodity pool operator reasonably believes'' standard.[44] Due to the proposed reorganization of Rule 4.7, however, a CPO who seeks to treat any of these persons as QEPs would have to reasonably believe that the person is a Non-United States person or that it is an entity comprised of QEPs. The Commission does not believe that this proposed revision should impose any additional burdens on CPOs, because it is a sound business practice that they likely have been following, notwithstanding the absence of an explicit requirement in existing text. Nonetheless, the Commission specifically requests comment on this proposed revision.

As for QECs, the text of the Proposal similarly would be taken from the current text of Rule 4.7[45] and would continue to incorporate by reference persons who qualify as QEPs irrespective of whether they satisfy the Portfolio Requirement. Because of the proposed addition of several persons who would qualify as QEPs irrespective of the Portfolio Requirement and because the rationale for providing relief to CTAs is analogous to that for CPOs, the Commission is proposing generally to include as QECs the same persons it is proposing to include as QEPs. Entirely new rules also would include in the QEC definition such persons as certain employees of the CTA, family members of those employees, and certain trusts. As with CPOs, due to the proposed reorganization of Rule 4.7, CTAs who seek to qualify such persons as QECs would have to reasonably believe that these persons meet the QEC criteria. Here too, and for the reasons provided above with respect to CPOs, the Commission does not believe that this proposed revision should impose any additional burdens on CTAs.

2. The Proposed Revisions

a. Principals of Certain Registered Investment Professionals—Proposed Paragraphs (a)(2)(i)(A) Through (D) and (a)(3)(i)(A)

Rule 4.7 would continue to include in the QEP and QEC definitions the four classes of registered investment professionals specified in the existing rule,[46] and it would be amended to include the principals of such persons. For the purposes of Part 4, the term ''principal'' is defined in Rule 4.10(e) to mean:

(i) Any person including, but not limited to, a sole proprietor, general partner, officer or director, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of the entity;

(ii) Any holder or any beneficial owner of ten percent or more of the outstanding shares of any class of stock of the entity; and

(iii) Any person who has contributed ten percent or more of the capital of the entity.

When it proposed Rule 4.7, the Commission noted that these registered investment professionals ''may be presumed to have sufficient expertise to evaluate the risks and benefits of investing in a commodity pool.''[47] Commission staff's experience has been that most of the persons comprising the classes of investment professionals listed in Rules 4.7(a) and 4.7(b) have principals, inasmuch as these persons typically are not natural persons. Commission staff further has found that it is mainly the principals of these investment professionals, and not the investment professionals themselves, who seek to participate in an exempt pool or open an exempt account.[48] Accordingly, the Commission is proposing to include the principals of these investment professionals as QEPs and QECs.

b. Registered Investment Advisers and Their Principals—Proposed Paragraphs (a)(2)(i)(E) and (a)(3)(i)(A)

As stated above, the Commission included the investment professionals specified in existing Rule 4.7 as QEPs and QECs because they ''may be presumed to have sufficient expertise to evaluate the risks and benefits of investing in a commodity pool'' (or opening a managed account). Upon consideration, the Commission believes that certain investment advisers also may be presumed to have such expertise as to come within the purpose of the QEP and QEC definitions and that, for the reasons provided above with respect to the Commission's proposal to include as QEPs and QECs the principals of the investment professionals defined as QEPs and QECs,[49] the principals of these investment advisers also should be included in the QEP and QEC definitions.[50]

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[41] Because of the proposed reorganization of Rule 4.7, the introductory text of existing paragraphs (a)(1)(ii)(A) and (b)(1)(ii)(A) would be set forth in proposed paragraphs (a)(2)(i) and (a)(3)(i), respectively.

[42] To make clear that the existing eligibility criteria of registration and two years' activity are alternate to and independent of the assets under management criterion, proposed paragraphs (a)(2)(i)(C) and (D) each present these criteria as (1) and (2). The Commission also is proposing to add a reference to Section 4m of the Act in these paragraphs to clarify the registration qualifications of CPOs and CTAs.

[43] 26 U.S.C. 501(c)(3)(1994) provides an exemption from federal income taxation for the following persons:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided * * *), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Currently, the rule provides that Section 501(c)(3) Organizations qualify as QEPs if they satisfy the Portfolio Requirement (existing paragraph (a)(1)(ii)(B)(2)(vii)). This would be retained, but redesignated (proposed paragraph (a)(2)(ii)(G)). See infra at Part III.B.2.h.

[44] See existing paragraph (a)(1)(ii)(A).

[45] As discussed above, however, the introductory text would be redesignated as paragraph (a)(3)(i).

[46] Existing paragraphs (a)(1)(ii)(A)(1) through (4).

[47] 57 FR at 3152.

[48] See, *e.g.*, CFTC Staff Letter No. 98–65, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,413 (Aug. 24, 1998) (two CPOs permitted to treat as QEPs the principals of the CPOs); CFTC Staff Letter No. 96–36 [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,686 (May 2, 1996) (CPO permitted to treat as a QEP a vice president of the CPO who was the managing director and principal of a broker-dealer subsidiary of the CPO).

[49] See supra at Part III.B.2.a.

[50] See, *e.g.*, CFTC Staff Letter No. 94–63, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,152 (March 24, 1994) (CPO permitted to treat the principal of an investment adviser as a QEP). These proposed changes, and the proposed inclusion as QEPs and QECs of, among other persons, qualified purchasers and knowledgeable

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Specifically, these new rules would provide that, to be a QEP or a QEC, an investment adviser must be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (''IAA'') [51] or pursuant to the laws of any state. Additionally, the investment adviser: (1) Must have been registered and active as such for two years; or (2) must provide securities investment advice to securities accounts which, in the aggregate, have total assets in excess of $5 million on deposit with one or more registered securities brokers. These criteria would be consistent with the current criteria applicable to investment professionals in general [52] and CTAs in particular.[53]

c. Qualified Purchasers—Proposed Paragraphs (a)(2)(i)(F) and (a)(3)(i)(A)

As previously stated, NSMIA added Section 3(c)(7) to the ICA, which provides an exemption from the definition of the term ''investment company'' to issuers whose securities are held exclusively [54] by persons who come within the definition of the term ''qualified purchaser'' set forth in Section 2(a)(51)(A) [55] of the ICA. This section defines a QP as:

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 80a–3(c)(7) of this title with that person's qualified purchaser spouse) who owns not less than $5,000,000 in investments, as defined by the Commission;

(ii) any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii) or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments.

Section 3(c)(7) was added to the ICA for the purposes of eliminating certain regulatory impediments for private investment pools, such as hedge funds and venture capital firms raising capital for new and growing businesses.[56]

The Commission is proposing to include QPs in the QEP and QEC definitions for two reasons. First, the Commission believes that persons defined as QPs, like those currently defined as QEPs and QECs, are sophisticated investors who have the financial ability and experience necessary to understand the risks of commodity interest trading and to obtain the information they require. Second, treating QPs as QEPs would further the Commission's objective in proposing Rule 4.7 to coordinate its rules with those of the SEC applicable to private offerings exempt from registration under the Securities Act.[57]

d. Knowledgeable Employees—Proposed Paragraphs (a)(2)(i)(G) and (a)(3)(i)(A)

As also previously stated, NSMIA directed the SEC to promulgate rules that would permit the ownership by knowledgeable employees of the securities of an issuer (or an affiliated person of the issuer) without loss of the issuer's exemption from the investment company definition under Section 3(c)(1) or 3(c)(7) of the ICA. In 1997, the SEC adopted Rule 3c–5 under the ICA, which defines the term ''knowledgeable employee'' as a natural person who is:

(i) An Executive Officer,[58] director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company [59] or an Affiliated Management Person [60] of the Covered Company; or

(ii) An employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company, other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, provided that such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

In furtherance of the Commission's goal of providing relief under Rule 4.7 to appropriate persons and of harmonizing its rules with those of the SEC, the Commission is proposing to include knowledgeable employees in the QEP and QEC definitions.

In this regard, the Commission notes that in April of 1999, staff of the SEC's Division of Investment Management responded to a series of inquiries from the Subcommittee on Private Investment Entities of the Federal Regulation of Securities Committee, Section of Business Law of the American Bar Association (''ABA'') concerning the scope of both the QP and knowledgeable employee definitions.[61] With respect to knowledgeable employees in particular, SEC staff, among other things, clarified the criterion that a knowledgeable employee ''participate in investment activities.'' In particular, SEC staff stated that ''[t]he rule * * * is clearly intended to encompass persons who actively participate in the management of a Fund's investments. The rule is not intended to include employees who

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employees, would cause existing paragraph (a)(1)(ii)(A)(5) to be redesignated as paragraph (a)(2)(i)(H)(1) and paragraph (a)(3)(i)(A) to refer to ''[a] person described in paragraph (a)(2)(i)(A), (B), (C), (D), (E), (F), (G), (J) or (K) of this section.''

[51] 15 U.S.C. 80b–3 (1994 & Supp. III 1997).

[52] For example, brokers or dealers who are registered pursuant to section 15 of the Securities Exchange Act of 1934 are defined as QEPs and QECs under existing paragraphs (a)(1)(ii)(A)(2) and (b)(1)(ii)(A), respectively.

[53] See existing paragraphs (a)(1)(ii)(A)(4) and (b)(1)(ii)(A).

[54] But see supra at Part I.C. (knowledgeable employees may acquire the securities of Section 3(c)(7) and 3(c)(1) funds).

[55] 15 U.S.C. 80a–2(a)(51)(A) (Supp. III 1997).

[56] H.R. Rep. No. 622, 104th Cong., 2d Sess., at 16 (1996), reprinted in 1996 U.S.C.C.A.N. 3877.

[57] A private placement under the Securities Act is a prerequisite to eligibility under Sections 3(c)(1) and 3(c)(7) of the ICA.

[58] Rule 3c–(a)(3) further defines an ''Executive Officer'' as ''the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person wo performs similar policy-making functions, for a covered Company or for an Affiliated Management Person of the Covered Company.''

[59] Rule 3c–5(a)(2) defines a ''Covered Company'' as a Section 3(c)(1) Company or a Section 3(c)(7) Company.

[60] Rule 3c–5(ak)(1) defines an ''Affiliated Management Person'' of the Covered Company as an ''an affiliated person, as such term is defined in section 2(a)(3) of the Act [15 USC 80a–2(a)(3)], that manages the investment activities of a Covered Company.'' Section 2(a)(3) of the ICA, 15 U.S.C. 80a–2(a)(3)(1994), defines an ''affiliated person'' of another person as:

(A) Any person directly or indirectly owning, controlling, or holding with power to vote 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by or under common control with, such other person. (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

Rule 3c–5(a)(1) further provides that ''[f]or purposes of this definition, the term 'investment company' as used in section 2(a)(3) of the Act includes a Covered Company.''

[61] American Bar Ass'n, [Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 7,548 (April 22, 1999) (the ''ABA Letter'').

merely obtain information regarding the investment activities of these Funds.'' [62] SEC staff further stated that the following types of employees described in the ABA Letter generally would not qualify as knowledgeable employees within the meaning of the rule: marketing and investor relations professionals; attorneys who participate in preparing offering documents and negotiating related agreements, and who provide advice concerning ongoing fund investments, operation and compliance matters; registered brokers and traders for a related broker-dealer; and financial, compliance, operational and accounting officers who have management responsibilities. As for research analysts, SEC staff stated that, as a general matter, unless the research analyst ''researches all potential portfolio investments and provides recommendations to the portfolio manager,'' the analyst would not qualify as a knowledgeable employee.

Further with respect to knowledgeable employees, in adopting Rule 3c–5 under the ICA the SEC clarified the criterion that a knowledgeable employee must have been performing the requisite functions or duties ''for at least 12 months.'' The SEC stated:

> The rule, as proposed, would have required employees who are knowledgeable employees by virtue of their participation in investment activities to have been engaged in these activities on behalf of the fund or the Management Affiliate for a period of at least 12 months. Several commenters suggested that the 12-month period would unnecessarily limit the ability of new employees who had equivalent experience with their previous employer to invest in the fund. The Commission has concluded that it is not necessary to require that an employee work for the particular fund or Management Affiliate for the entire 12-month period as long as the employee has the requisite experience to appreciate the risks of investing in the fund. The rule, as adopted, therefore includes as knowledgeable employees those employees who performed substantially similar functions or duties for or on behalf of another person during the preceding 12 months.[63]

The Commission intends to follow interpretations issued by the SEC and its staff of the QP and knowledgeable employee definitions.[64] The Commission has the right further to interpret or to amend Rule 4.7 to exclude from the QEP and QEC definitions any person that the SEC or its staff found to be a QP or knowledgeable employee or to include in the QEP and QEC definitions any person the SEC or its staff excluded from the QP or knowledgeable employee definition, if such action is found to be necessary to effectuate the purposes of the Act and the Commission's regulations. The Commission expects that it would exercise this right infrequently.

e. The CPO, CTA and Investment Adviser of the Exempt Pool and Their Affiliates; Affiliates of the CTA of the Exempt Account—Proposed Paragraphs (a)(2)(i)(H)(1) and (a)(3)(i)(B)(1)

Rule 4.7 currently defines as a QEP the CPO or the CTA of ''the exempt pool offered or sold.'' [65] The Proposal would incorporate this text and it also would include in the QEP definition an investment adviser of the exempt pool and an affiliate of the CPO, CTA or investment adviser.[66]

When it included CTAs of exempt pools in the QEC definition the Commission explained that:

> [s]ince CTAs as well as CPOs may take an interest in a pool being offered, absent [inclusion of CTAs in the QEP definition], this may result in the pool losing its qualified status as a CTA client by virtue of such participation. The inclusion of this provision avoids the discrepancy that would otherwise exist.[67]

Commission staff has found that Rule 4.7(a) exempt pools typically trade both commodity interests and securities, and thus may have CPOs, CTAs and securities investment advisers associated with them. Since the investment adviser and affiliates of the CTA, CPO and investment adviser likewise may take an interest in the pool, the Commission is proposing to include each of these persons in the QEP definition.

An affiliate of a CTA similarly may have an account traded by the CTA. Accordingly, the Commission also is proposing to include in the QEC definition an affiliate of the CTA of the exempt account.

f. Principals, Employees and Family Members—Proposed Paragraphs (a)(2)(i)(H)(2) through (5) and (a)(3)(i)(B)(2) through (5)

The Proposal would include in the QEP and QEC definitions persons such as the principals and employees of CPOs and CTAs, along with certain of their family members. Each of these proposed rules is discussed separately below. Preliminarily, however, it should be noted that because certain of these rules [68] would be based upon the ''knowledgeable employee'' definition, the ''12 months'' and ''24 months'' referred to therein would refer to the preceding 12 months and 24 months, as the case may be. Thus, an employee would be a QEP or QEC under these rules if it has worked the requisite time period for a relevant employer, discussed below—who need not be the CPO or CTA seeking to treat the employee as a QEP or QEC.

i. Principals—Proposed Paragraphs (a)(2)(i)(H)(2) and (a)(3)(i)(B)(2)

The Proposal would include in the QEP definition a principal of the exempt pool, the CPO, the CTA or the investment adviser of the exempt pool, or a principal of an affiliate of the pool, CPO, CTA or investment adviser.[69] It similarly would include in the QEC definition a principal of the CTA of the exempt account or of an affiliate of the CTA.[70] These rules would be parallel to, and would be based upon the same rationale underlying, the rules to include in the QEP and QEC definitions the principals of those persons comprising the classes of investment professionals who currently are, and under the Proposal would continue to be, QEPs and QECs.[71]

ii. Employees Involved in Investment Management Activities—Proposed Paragraphs (a)(2)(i)(H)(3) and (a)(3)(i)(B)(3)

The Proposal would include in the QEP definition an employee of the exempt pool, the CPO, the CTA or the investment adviser of the exempt pool, or of an affiliate of the pool, CPO, CTA or investment adviser, provided that the employee: (1) In connection with his or her regular functions or duties participates in the investment activities of the exempt pool or other commodity pools operated by the CPO of the exempt pool or other accounts advised by the CTA or the investment adviser of the exempt pool, or by an affiliate; and (2) has been performing such functions

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[62] ABA Letter at 78,746 (footnote omitted).

[63] 62 FR at 17524–25.

[64] In this regard, however, SEC staff has stated that whether an employee ''actively participates in the investment activities of a Fund is a factual determination that must be made on a case-by-case basis by the Fund,'' and that consequently, SEC staff generally will not entertain any requests on its views ''with respect to whether a particular employee or type of employee meets this aspect of the knowledgeable employee definition.'' ABA Letter at 78,746.

Proposed Paragraphs (a)(2)(i) and (a)(3)(i), which are based on existing paragraphs (a)(1)(ii)(A) and (b)(1)(ii)(A), similarly require CPOs and CTAs, respectively, to make a factual determination, *i.e.,* to ''reasonably believe'' that a person does in fact satisfy the requisite QEP or QEC criteria.

[65] Existing paragraph (a)(1)(ii)(A)(5).

[66] The term ''affiliate'' is discussed supra at Part III.A.

[67] 57 FR at 34855.

[68] Proposed paragraphs (a)(2)(i)(H)(3) and (4) and (a)(3)(i)(B)(3) and (4).

[69] Because many collective investment vehicles trade both commodity interests and securities, and they would have both CTAs and investment advisers providing trading advice to them.

[70] See supra at Part III.B.2.a. for a discussion of the term ''principal.''

[71] See, *e.g.,* CFTC Staff Letter No. 98–69, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,438 (Sept. 24, 1998) (CPO permitted to treat as QEPs the principals of the CPO).

or duties for the employer, or substantially similar functions or duties for another person engaged in providing commodity interest, securities or other financial services, for at least 12 months. This rule specifically would exclude employees who perform solely clerical, secretarial or administrative functions.

In proposing this rule, the Commission is seeking to harmonize its rules with those of the SEC. Thus, the employee that would qualify under this rule must, for example, ''actively participate'' in the management of the pool's investments. The rule would not include as QEPs employees such as financial, compliance and operational professionals, brokers, traders, or attorneys who merely obtain information regarding the investments, nor would it include research analysts, unless such persons research all potential investments for the pool and provide their recommendations to the person who makes the investment decisions for the pool. The foregoing is intended to ensure that if the employee of a person specified under the rule would qualify as a knowledgeable employee but for the fact that the employee is an employee of a commodity pool, its operator, advisor or affiliate and is not an employee of a Covered Company or an Affiliated Management Person, then the employee may be considered a QEP.

Similarly, the Proposal would include in the QEC definition an employee of the CTA of the exempt account or of an affiliate of the CTA provided that the employee: (1) In connection with his or her regular functions and duties participates in the management of the investment activities of the CTA or the affiliate; and (2) has been performing such functions and duties for the employer or substantially similar functions or duties for another person engaged in providing commodity interest, securities or other financial services for at least 12 months.[72] Here, too, the rule specifically would exclude employees who perform solely clerical, secretarial or administrative functions. The Commission intends that this rule would be applicable under the same types of situations as discussed above with respect to certain employees as QEPs and thus, an employee who merely obtains information about the investment activities of a CTA or an affiliate, but does not ''actively participate'' in such investment activities, would not qualify as a QEC under this rule.[73]

iii. Other Employees-Proposed Paragraphs (a)(2)(i)(H)(4) and (a)(3)(i)(B)(4)

The Proposal also would include in the QEP definition any other employee of the exempt pool, CPO, CTA or investment adviser of the exempt pool, or of an affiliate of the pool, CPO, CTA or investment adviser, provided the employee: (1) Is an accredited investor as defined in Rule 501(a)(5)[74] or 501(a)(6)[75] under the Securities Act (''Accredited Investor''); and (2) has been employed by such person, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months. Employees who perform solely clerical, secretarial or administrative functions would be expressly excluded from this rule. Thus, the financial, compliance and operational professionals, brokers, traders and attorneys who would not qualify as QEPs because they do not ''actively participate'' in investment management activities would qualify as QEPs under this rule if they are Accredited Investors and have two years of relevant experience. A research analyst responsible for performing research with respect to one commodity or one market also would qualify under this provision, if the employee otherwise meets the requirements of the proposed rule, *i.e.,* that he or she has two years of relevant experience and is an Accredited Investor.

Similarly, the Proposal would include in the QEC definition any other employee of the CTA of the exempt account or of an affiliate of the CTA (other than employees performing solely clerical, secretarial or administrative functions), provided that the employee: (1) Is an Accredited Investor; and (2) has been employed by such person, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months.

The Commission is proposing these new rules because it believes that defining as QEPs and QECs persons who satisfy the foregoing criteria would be consistent with the intent of Rule 4.7 of reducing unnecessary regulatory prescriptions for CPOs and CTAs with respect to persons who do not appear to need the full protections offered by the Part 4 framework.[76]

iv. Family Members—Proposed Paragraphs (a)(2)(i)(H)(5) and (a)(3)(i)(B)(5)

The Proposal further would include in the QEP definition the spouse, child, sibling or parent of a person who is associated with the exempt pool in which the family member seeks to invest,[77] provided that an investment in the exempt pool by any such family member is made with the knowledge and at the direction of the person. Similarly, the Proposal would include in the QEC definition the spouse, child, sibling or parent of the CTA of the exempt account or of a person who is associated with the CTA, provided that the establishment of an exempt account by any such family member is made with the knowledge and at the direction of the trading advisor or person. Given the very limited scope of these definitions, the Commission further is proposing that the family member would be a QEP or a QEC solely for the purposes of the applicable paragraph. Thus, for example, the sibling of a person who is associated with the exempt pool (*e.g.,* the person is the sole owner of the pool's CPO) would not be a QEP for the purposes of any other provision under Rule 4.7.[78]

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[72] The courts generally have held that an account that trades solely commodity interests is not a ''security'' within the meaning of the federal securities laws. See, *e.g.,* Salcer v. Merrill Lynch, Pierce, Fenner and Smith Inc., 682 F.2d 459 (3d Cir. 1982); Hirk v. Agri-Research Council, Inc., 561 F.2d 96 (7th Cir. 1977). Accordingly, such an account would not have an investment adviser. For this reason, proposed paragraphs (a)(3)(i)(B)(1) through (5) do not refer to an investment adviser of the exempt account (or to a principal, affiliate or employee of an investment adviser of the exempt account).

[73] Here, too, the Commission intends that a determination of whether an employee is a QEP or a QEC under proposed paragraph (a)(2)(i)(H)(3) or (a)(3)(i)(B)(3), respectively, would be made on a case-by-case basis by the CPO of the exempt pool or the CTA of the exempt account-based on the ''reasonably believes'' standard set forth in proposed paragraphs (a)(2)(i) and (a)(3)(i), respectively.

[74] Rule 501(a)(5) under the Securities Act defines an accredited investor as:

Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase [of securities exempt from registration under the Securities Act] exceeds $1,000,000.

[75] Rule 501(a)(6) under the Securities Act defines an accredited investor as:

Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

[76] See 57 FR at 3150. See also CFTC Staff Letter No. 98–14, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,265 (Feb. 27, 1998) (CPO permitted to treat as QEPs certain employees of the CPO).

[77] See, *e.g.,* CFTC Staff Letter No. 98–47, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,383 (July 22, 1998) (CPO permitted to treat as QEPs the parents of the sole owner, managing member and principal of a CPO).

[78] For example, the sibling would not be a QEP under proposed paragraph (a)(2)(ii)(L), which would require, among other things, that for a pool to be a QEP, the pool's participation in the exempt pool must be directed by a QEP.

g. Trusts—Proposed Paragraphs (a)(2)(i)(I) and (a)(3)(i)(C)

The Proposal would provide alternate criteria for trusts to qualify as QEPs and QECs. Rule 4.7 currently provides that trusts qualify as QEPs and QECs if, among other things, they meet a portfolio requirement and have total assets in excess of $5 million.[79] In the course of administering Rule 4.7, Commission staff has become aware of situations where a trust cannot meet the existing QEP criteria for trusts, but the person who makes the investment decisions for the trust and the person who has contributed assets to the trust is a QEP. Because the decision-maker and settlor of a trust are critically integral to the trust, staff has permitted CPOs to treat trusts as QEPs in these situations.[80] The proposed rules would include these trusts as QEPs and QECs, provided they were not formed for the purpose of participating in an exempt pool or opening an exempt account.

These proposed rules are modeled after Section 2(a)(51)(A)(iii) of the ICA, which, as stated above, defines as QPs trusts that meet similar criteria, except that a trust qualifies as a QP under Section 2(a)(51)(A)(iii) if it was not formed for the specific purpose of ''acquiring the securities of the exempt issuer.'' Neither the Act nor the Commission's regulations, however, contain provisions directly relating to the acquisition of securities, or the ''securities of an exempt issuer.'' Accordingly, the Proposal would provide that trusts not formed for the specific purpose of ''participating in the exempt pool'' or ''opening an exempt account'' would be QEPs or QECs, respectively.

h. Section 501(c)(3) Organizations—Proposed Paragraphs (a)(2)(i)(J) and (a)(3)(i)(A)

The Proposal would provide alternate criteria for Section 501(c)(3) Organizations to qualify as QEPs and QECs. Rule 4.7 currently provides that such organizations qualify as QEPs and QECs if they meet a portfolio requirement and have total assets in excess of $5,000,000.[81] Here, too, Commission staff has become aware of situations where a Section 501(c)(3) Organization itself cannot meet the requisite QEP criteria, but the person who makes the investment decisions for the organization and the person who established the organization is a QEP. Because the decision-maker and person who has established the organization are critically integral to the organization, staff has permitted CPOs to treat Section 501(c)(3) Organizations as QEPs in these situations.[82] The proposed rules would include these organizations as QEPs and QECs.

i. Non-United States Persons as QECs—Proposed Paragraph (a)(3)(i)(A)(2)

The Proposal would include, under certain circumstances, a Non-United States person in the QEC definition.[83] Specifically, a Non-United States person would come within the QEC definition where the CTA who seeks to direct or guide the commodity interest trading account of the person: (1) Provides commodity interest trading advice solely to persons who are QECs (including persons who are Non-United States persons); and (2) has filed a notice of claim for exemption pursuant to proposed Rule 4.7(c).

Currently, persons who are not United States persons are QEPs,[84] but they are not also QECs. In adopting Rule 4.7 the Commission stated that it had defined persons who are not United States persons as QEPs with the objective of facilitating multijurisdictional offerings,[85] an objective that is not applicable in the context of CTAs and individual managed accounts. In this regard, the Commission noted that Rule 4.7 would provide relief to CTAs that would not be generally available to investment advisers under the securities laws and that therefore investment advisers advising QECs would be obligated to deliver a brochure to such clients. On this basis, the Commission determined not to include persons who were not United States persons as QECs. The Commission further stated that inclusion of these persons as QECs without regard to qualifying criteria should await further experience with the QEC concept.[86]

Currently, then, a CTA is ineligible for relief under Rule 4.7 with respect to those of its advisory clients who are Non-United States persons (and who are not otherwise QECs). In the past, Commission staff has provided exemptive relief from the specific Disclosure Document requirements of Rules 4.31, 4.34, 4.35 and 4.36 where a CTA directs or guides exclusively the accounts of Non-United States persons.[87] The Proposal would codify this practice. It also would incorporate Commission staff's belief that where the clients for which a CTA directs or guides accounts are a mix of Non-United States persons and persons who are QECs, Rule 4.7 should be available to the CTA.

If a CTA additionally directs or guides the accounts of United States persons who are not QECs, however, under the Proposal, Rule 4.7 relief would remain unavailable to the CTA with respect to its clients who are Non-United States persons. This is because in such case (*i.e.,* where the CTA directs or guides the accounts of persons who are QECs and persons who are not QECs), the CTA is subject to the Disclosure Document requirements of Rules 4.31, 4.34, 4.35 and 4.36 and the recordkeeping requirements of Rule 4.33 with respect to its clients who are not QECs. Requiring the CTA also to comply with these Disclosure Document and recordkeeping requirements with respect to its clients who are Non-United States persons should not impose any additional burden on the CTA, since these are requirements with which it already is subject to compliance.

The Commission believes that the limitations of the proposed rule are consistent both with prior staff practice and the purposes of Rule 4.7. The Commission nonetheless specifically requests comments on this proposed rule.

C. Persons Who Must Satisfy the Portfolio Requirement To Be QEPs and QECs—Proposed Paragraphs (a)(2)(ii)(A) Through (L) and (a)(3)(ii)(A) and (L)

The text of this portion of the Proposal would be based upon existing

[79] Existing paragraphs (a)(1)(ii)(B)(2)(xi) and (b)(1)(ii)(B)(2)(xi), respectively. Under proposed paragraphs (a)(2)(ii)(L) and (a)(3)(ii)(L), trusts would continue to qualify as QEPs and QECs, respectively, subject to meeting the Portfolio Requirement and certain other criteria.

[80] *See, e.g.,* CFTC Staff Letter No. 98–48, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,384 (June 22, 1998) (CPO permitted to treat a trust that was established for estate-planning purposes and had total assets of approximately $77,000 as a QEP where the decision-maker and the settlor of the trust was himself a QEP).

[81] Existing paragraphs (a)(1)(ii)(B)(2)(vii) and (b)(1)(ii)(B)(2)(vii), respectively. Under proposed paragraphs (a)(2)(ii)(G) and (a)(3)(ii)(G), Section 501(c)(3) Organizations would continue to qualify as QEPs and QECs, respectively, subject to meeting the criteria of the existing rules.

[82] See *e.g.,* CFTC Staff Letter No. 97–16, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,008 (March 21, 1997) (CPO permitted to treat a Section 501(c)(3) charitable organization as a QEP where the investment decisions were made by an individual who was a QEP and that individual also established the charitable organization).

[83] As discussed supra at Part III.A., the term ''Non-United States person'' would be defined in proposed paragraph (a)(1)(iv), and it would be based on the text of existing paragraph (a)(1)(ii)(C).

Proposed paragraph (a)(3)(i)(A) would include Non-United States persons as QECs through incorporation by reference to the fact that they would be QEPs under proposed paragraph (a)(2)(i)(K).

[84] Existing paragraph (a)(1)(ii)(C).

[85] See 57 FR at 34856.

[86] See *Id.* at n.21.

[87] See, *e.g.,* CFTC Staff Letter No. 97–09, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. ¶ 26, 976 (Feb. 6, 1997); CFTC Staff Letter No. 95–73, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. ¶ 26, 503 (Aug. 24, 1995).

text, and it would continue to include in the QEP and QEC definitions those persons who must satisfy a portfolio requirement [88] in order to qualify as QEPs or QECs.

With respect to QEPs in particular, all but one of the proposed rules [89] would be taken from existing text,[90] with various technical revisions made to them.[91] The remaining proposed rule would be taken from existing text but would be amended, as discussed below, to make it easier for pools, trusts, insurance company separate accounts and bank collective trusts to qualify as QEPs.

With respect to these collective investment vehicles, Rule 4.7 currently provides that a QEP is:

A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of participating in the exempt pool, and whose participation in the exempt pool is directed by a qualified eligible participant; Provided, That except where the pool, trust, insurance company separate account or bank collective trust would constitute a qualified eligible participant under paragraph (a)(1)(ii)(D) of this section, no more than 10 percent of the fair market value of the assets of such entity are used to purchase units in exempt pools.[92]

The foregoing proviso is sometimes referred to as the ''Ten Percent Restriction.'' The Commission stated that it proposed this restriction ''because participants in these entities may not be QEPs and thus could not invest in a qualified eligible pool based on their own financial qualifications and investment sophistication.'' [93] Based upon staff's experience with the Ten Percent Restriction, the Commission has come to the view that the other criteria of the rule—*i.e.* that the collective investment vehicle must satisfy a portfolio requirement, must have total assets in excess of $5 million, may not be formed for the specific purpose of participating in the exempt pool and must have its participation in the exempt pool directed by a QEP—are sufficient to satisfy the Commission's concerns.[94] Accordingly, the Commission is proposing to eliminate the Ten Percent Restriction.[95]

As for QECs, the Proposal would continue to include in the QEC definition those persons who, subject to satisfying a portfolio requirement, would be QECs.[96] The Proposal also would continue to include certain trusts, insurance company separate accounts and bank collective trusts in the QEC definition.[97] To parallel the action proposing to eliminate the Ten Percent Restriction, and for the reasons stated above in support of that action, the Commission also is proposing to eliminate the current requirement that these trading vehicles are vehicles ''in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible participants.''

IV. Comparison Chart

The following chart compares proposed Rule 4.7 with existing Rule 4.7. For each proposed paragraph, the chart indicates the corresponding existing paragraph, with any substantive revision (''SR'') or technical revision (''TR'') to the existing paragraph noted. The chart also indicates by ''—'' any proposed paragraph that does not correspond to an existing paragraph. To avoid what otherwise would be a very lengthy presentation, as appropriate the chart groups together certain paragraphs.

Proposed rule 4.7	Existing rule 4.7	Proposed rule 4.7	Existing rule 4.7	Proposed rule 4.7	Existing rule 4.7
(a)	(a)(1), SR	(a)(2)(i)(K)–(L)	(a)(1)(ii)(C)–(D), SR, TR.	(b)(1)(iv)	(a)(2)(iv),TR
(a)(1)		(a)(2)(ii)	(a)(1)(ii)(B)(1)–(2), TR	(b)(2)	(a)(3)
(a)(1)(i)		(a)(2)(ii)(A)	(a)(1)(ii)(B)(2)(i), TR	(b)(2)(i)	(a)(3)(i)
(a)(1)(ii)	(b)(1)(i), TR	(a)(2)(ii)(B)–(D)	(a)(1)(ii)(B)(2)(ii)–(iv)	(b)(2)(i)(A)–(C)	(a)(3)(i)(A)–(C)
(a)(1)(iii)	(a)(1)(i), TR	(a)(2)(ii)(E)–(G)	(a)(1)(ii)(B)(2)(v)–(vii), TR.	(b)(2)(i)(D)	(a)(3)(i)(D), TR
(a)(1)(iv)	(a)(1)(ii)(C), TR	(a)(2)(ii)(H)–(J)	(a)(1)(ii)(B)(2)(viii)–(x)	(b)(2)(i)(E)–(H)	(a)(3)(i)(E)–(H)
(a)(1)(iv)(A)–(C)	(a)(1)(ii)(C)(1)–(3)	(a)(2)(ii)(K)	(a)(1)(ii)(B)(2)(xii), TR	(b)(2)(i)(I)(1)	(a)(3)(i)(I)(1), TR
(a)(1)(iv)(D)	(a)(1)(ii)(C)(4), TR	(a)(2)(ii)(L)	(a)(1)(ii)(B)(2)(xi), SR	(b)(2)(i)(I)(2)	(a)(3)(i)(I)(2), TR
(a)(1)(iv)(E)	(a)(1)(ii)(C)(5)			(b)(2)(ii)–(iii)	(a)(3)(ii)–(iii)
(a)(1)(v)		(a)(3)	(b)(1)(ii), TR		
(a)(1)(v)(A)	(a)(1)(ii)(B), SR, TR	(a)(3)(i)	(b)(1)(ii)(A), TR	(b)(3)	(a)(4)
(a)(1)(v)(A)(1)–(2)	(a)(1)(ii)(B)(1)(i)–(ii)	(a)(3)(i)(A)	(b)(1)(ii)(A), SR, TR		
(a)(1)(v)(A)(3)	(a)(1)(ii)(B)(1)(iii), TR	(a)(3)(i)(B)–(C)		(c)	(b)(2), TR
(a)(1)(v)(B)	(b)(1)(ii)(B), SR, TR	(a)(3)(i)(D)	(b)(1)(ii)(C), SR, TR	(c)(1)	
(a)(1)(v)(B)(1)–(2)	(b)(1)(ii)(B)(1)(i)–(ii)	(a)(3)(i)(E)	(b)(1)(ii)(D), SR, TR	(c)(1)(i)–(ii)	(b)(2)(i)–(ii)
(a)(1)(v)(B)(3)	(b)(1)(ii)(B)(1)(iii), TR	(a)(3)(i)(F)	(b)(1)(ii)(E), SR, TR		
(a)(1)(vi)	(a)(1)(ii)(C)	(a)(3)(ii)	(b)(1)(ii)(B)(1)–(2), TR	(c)(2)	(b)(3)
		(a)(3)(ii)(A)–(B)	(b)(1)(ii)(B)(2)(i)–(ii), TR.	(c)(2)(i)–(iii)	(b)(3)(i)–(iii)
(a)(2)	(a)(1)(ii), TR	(a)(3)(ii)(C)–(D)	(b)(1)(ii)(B)(2)(iii)–(iv)		
(a)(2)(i)	(a)(1)(ii)(A), TR	(a)(3)(ii)(E)–(G)	(b)(1)(ii)(B)(2)(v)–(vii),TR.	(c)(3)	(b)(4)
(a)(2)(i)(A)–(B)	(a)(1)(ii)(A)(1)–(2), SR	(a)(3)(ii)(H)–(J)	(b)(1)(ii)(B)(2)(viii)–(x)		
(a)(2)(i)(C)(1)–(2)	(a)(1)(ii)(A)(3), TR	(a)(3)(ii)(K)	(b)(1)(ii)(B)(2)(xii),TR	(d)	(c)

[88] As discussed supra at Part III.A, the portfolio requirement would be set forth in the definitional section of the rule. See Proposed paragraph (a)(1)(v).

[89] Proposed paragraphs (a)(2)(ii)(A) through (K).

[90] See existing paragraphs (a)(1)(ii)(B)(2)(i) through (x) and (xii).

[91] Compare existing paragraph (a)(1)(ii)(B)(2)(i), which uses a full citation to the ICA, with proposed paragraph (a)(2)(ii)(A), which would use a short form citation to the ICA.

[92] Existing paragraph (a)(1)(ii)(B)(2)(xi).

[93] 57 FR at 3152. In light of the differences between an exempt pool, which is owned by two or more pool participants, and an exempt account, which as a non-pooled investment vehicle may only be owned by one client, existing paragraph (b)(1)(ii)(B)(2)(xi) does not contain a proviso corresponding to the Ten Percent Restriction.

[94] See, e.g., CFTC Staff Letter No. 98–37 [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,360 (June 5, 1998) (CPO granted relief from the Ten Percent Restriction with respect to a trust that was comprised of a QEP and his non-QEP wife, where the trust met the portfolio requirement, had total assets in excess of $5 million, was not formed for the specific purposes of participating in the exempt pool and had its participation in the exempt pool directed by a QEP).

[95] Proposed paragraph (a)(2)(ii)(L).

[96] Proposed paragraph (a)(3)(ii)(A) through (L). Thus, the Proposal would continue to include within the QEC definition those persons who are defined as QECs under existing paragraphs (b)(1)(ii)(B)(2)(i) through (x) and (xii).

[97] Proposed paragraph (a)(3)(ii)(L). These collective investment vehicles currently are included as QECs under existing paragraph (b)(1)(ii)(B)(2)(xi).

Proposed rule 4.7	Existing rule 4.7	Proposed rule 4.7	Existing rule 4.7	Proposed rule 4.7	Existing rule 4.7
(a)(2)(i)(D)	(a)(1)(ii)(A)(4), SR, TR.	(a)(3)(ii)(L)	(b)(1)(ii)(B)(2)(xi), SR	(d)(1)	(c)(1)
(a)(2)(i)(E)–(G)				(d)(1)(i)–(iii)	(c)(1)(i)–(iii)
(a)(2)(i)(H)(1)	(a)(1)(ii)(A)(5), SR	(b)	(a)(2), TR		
(a)(2)(i)(H)(2)–(5)		(b)(1)		(d)(2)	(c)(2), TR
(a)(2)(i)(I)–(J)		(b)(1)(i)–(iii)	(a)(2)(i)–(iii).		

V. Related Matters

A. Paperwork Reduction Act

Rule 4.7 affects information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget for its review.

Collection of Information

Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, OMB Control Number 3038–0005.

The expected effect of the proposed amended rule will be to reduce the burden previously approved by OMB for this collection of information by 1,644 hours because, while it will result in an increase in the number of filings under Rule 4.7, it will result in a larger decrease in the information collection requirements under the disclosure, reporting and recordkeeping rules.

Specifically:

The burden associated with Commission Rule 4.7, as applied to CPOs and CTAs, is expected to be increased by 30 hours:

Estimated number of respondents (after proposed exemption): 660.

Annual responses by each respondent: 1.

Estimated average hours per response: 0.50.

Annual reporting burden: 330 hours.

This annual reporting burden of 330 hours represents an increase of 30 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.21, as applied to CPOs is expected to be decreased by 73.84 hours:

Estimated number of respondents (after proposed exemption): 565.

Annual responses by each respondent: 0.88.

Estimated average hours per response: 2.80.

Annual reporting burden: 1,392.16.

While the estimated burden figure of 1,392.16 for Rule 4.21 is higher than the burden figure previously reported to OMB, the Commission believes that the previously reported burden figure was based on an incorrect figure for the number of CPOs and the burden figure should have been reported at 1,466. This annual reporting burden of 1,392.16 hours represents a decrease of 73.84 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.22(a), as applied to CPOs, is expected to be decreased by 548.63 hours:

Estimated number of respondents (after proposed exemption): 420.

Annual responses by each respondent: 4.75.

Estimated average hours per response: 3.85.

Annual reporting burden: 7,680.75.

This annual reporting burden of 7,680.75 hours represents a decrease of 548.63 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.22(c) is expected to be reduced by 270 hours:

Estimated number of respondents (after proposed exemption): 480.

Annual responses by each respondent: 1.

Estimated average hours per response: 9.

Annual reporting burden: 4,320.

This annual reporting burden of 4,320 hours represents a decrease of 270 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.23 is expected to be reduced by 1,260 hours:

Estimated number of respondents (after proposed exemption): 472.

Annual responses by each respondent: 1.

Estimated average hours per response: 42.

Annual reporting burden: 19,824

This annual reporting burden of 19,824 hours represents a decrease of 1,260 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.31 is expected to be reduced by 55.86 hours:

Estimated number of respondents (after proposed exemption): 620.

Annual responses by each respondent: 1.33.

Estimated average hours per response: 1.40.

Annual reporting burden: 1,154.44.

This annual reporting burden of 1,154.44 hours represents a decrease of 55.86 hours as a result of the proposed amendments to Rule 4.7.

The burden associated with Commission Rule 4.33 is expected to be reduced by 780 hours:

Estimated number of respondents (after proposed exemption): 1,970.

Annual responses by each respondent: 1.

Estimated average hours per response: 26.

Annual reporting burden: 51,220.

This annual reporting burden of 51,220 hours represents a decrease of 780 hours as a result of the proposed amendments to Rule 4.7.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the

Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street N.W., Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[98] requires each federal agency to consider in the course of proposing substantive rules the effect of those rules on small entities. The proposed amendments to Rule 4.7 would affect registered CPOs and CTAs. The Commission previously has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[99] The Commission determined that registered CPOs are not small entities for the purposes of the RFA.[100] With respect to CTAs, the Commission stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.[101]

Existing Rule 4.7 provides exemptive relief from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs and CTAs with respect to pools and accounts owned solely by QEPs and QECs, respectively. The relief that is provided reduces rather than increases the regulatory requirements that apply to registered CPOs and CTAs. The proposed amendments to Rule 4.7 would expand this relief by bringing within the QEP and QEC definitions persons not included in the existing rules. Further, this expanded relief would be available to all registered CPOs and CTAs, regardless of size. The Commission thus believes that the proposed amendments, if adopted, would further reduce the regulatory burdens on registered CPOs and CTAs.

Accordingly, pursuant to 5 U.S.C. § 605(b), the Chairman, on behalf of the Commission, certifies that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

[98] 5 USC 601 *et seq.* (1994 & Supp. II 1996).

[99] 47 FR 18618 (April 30, 1982).

[100] *Id.* at 18619–20.

[101] *Id.* at 18620.

List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 1a(4), 1a(5), 4b, 4*l*, 4m, 4n, 4*o* and 8a, 7 U.S.C. 1a, 6b, 6*l,* 6m, 6n, 6*o* and 12a, the Commission hereby proposes to amend Part 4 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.7 is proposed to be revised to read as follows:

§ 4.7 Exemption from certain part 4 requirements with respect to pools whose participants are limited to qualified eligible participants and with respect to commodity trading advisors' accounts for clients that are qualified eligible clients.

(a) *Definitions.* Paragraph (a)(1) of this section contains general definitions, paragraph (a)(2) of this section contains the definition of the term ''qualified eligible participant'' and paragraph (a)(3) of this section contains the definition of the term ''qualified eligible client.'' For the purposes of this section:

(1) In general. (i) *Affiliate of*, or a person affiliated with, a specified person means a person that directly or indirectly through one or more persons, controls, is controlled by, or is under common control with the specified person.

(ii) *Exempt account* means the account of a qualified eligible client that is directed or guided by a commodity trading advisor pursuant to an effective claim for exemption under § 4.7.

(iii) *Exempt pool* means a pool that is operated pursuant to an effective claim for exemption under § 4.7.

(iv) *Non-United States person* means:

(A) A natural person who is not a resident of the United States;

(B) A partnership, corporation or other entity, other than an entity organized principally for passive investment, organized under the laws of a foreign jurisdiction and which has its principal place of business in a foreign jurisdiction;

(C) An estate or trust, the income of which is not subject to United States income tax regardless of source;

(D) An entity organized principally for passive investment such as a pool, investment company or other similar entity; Provided, That units of participation in the entity held by persons who do not qualify as Non-United States persons represent in the aggregate less than 10% of the beneficial interest in the entity, and that such entity was not formed principally for the purpose of facilitating investment by persons who do not qualify as Non-United States persons in a pool with respect to which the operator is exempt from certain requirements of Part 4 of the Commission's regulations by virtue of its participants being Non-United States persons; and

(E) A pension plan for the employees, officers or principals of an entity organized and with its principal place of business outside the United States.

(v) *Portfolio Requirement* means:

(A) With respect to a qualified eligible participant, that the person:

(1) Owns securities (including pool participations) of issuers not affiliated with such participant and other investments with an aggregate market value of at least $2,000,000;

(2) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding the date of sale to that person of a pool participation in the exempt pool, at least $200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or

(3) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (a)(1)(v)(A)(1) and (2) of this section in which the sum of the funds or property includable under paragraph (a)(1)(v)(A)(1), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable under paragraph (a)(1)(v)(A)(2), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (a)(1)(v)(A)(3) would consist of $1,000,000 in securities and other property (50% of paragraph (a)(1)(v)(A)(1)) and $100,000 in exchange-specified initial margin and option premiums (50% of paragraph (a)(1)(v)(A)(2)).

(B) With respect to a qualified eligible client, that the person:

(1) Owns securities (including pool participations) of issuers not affiliated with such client and other investments with an aggregate market value of at least $2,000,000;

(2) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding the date that person opens an exempt account with the commodity trading advisor, at least $200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or

(3) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (a)(1)(v)(B)(1) and (2) of this section in which the sum of the funds or property includable under paragraph (a)(1)(v)(B)(1), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable in paragraph (a)(1)(v)(B)(2), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (a)(1)(v)(B)(3) would consist of $1,000,000 in securities and other property (50% of paragraph (a)(1)(v)(B)(1)) and $100,000 in exchange-specified initial margin and option premiums (50% of paragraph (a)(1)(v)(B)(2)).

(vi) *United States* means the United States, its states, territories or possessions, or an enclave of the United States government, its agencies or instrumentalities.

(2) *Qualified eligible participants*—(i) Persons who are qualified eligible participants irrespective of the Portfolio Requirement. *Qualified eligible participant* means any person, acting for its own account or for the account of a qualified eligible participant, who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, is:

(A) A futures commission merchant registered pursuant to section 4d of the Act, or a principal thereof;

(B) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, or a principal thereof;

(C) A commodity pool operator registered pursuant to section 4m of the Act, or a principal thereof; *Provided,* That the commodity pool operator:

(1) Has been registered and active as such for two years; or

(2) Operates pools which, in the aggregate, have total assets in excess of $5,000,000;

(D) A commodity trading advisor registered pursuant to section 4m of the Act, or a principal thereof; *Provided,* That the commodity trading advisor:

(1) Has been registered and active as such for two years; or

(2) Provides commodity interest trading advice to commodity accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more futures commission merchants;

(E) An investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 (the ''Investment Advisers Act'') or pursuant to the laws of any state, or a principal thereof; *Provided,* That the investment adviser:

(1) Has been registered and active as such for two years; or

(2) Provides securities investment advice to securities accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more registered securities brokers;

(F) A ''qualified purchaser'' as defined in section 2(51)(A) of the Investment Company Act of 1940 (the ''Investment Company Act'');

(G) A ''knowledgeable employee'' as defined in § 270.3c–5 of this title;

(H)(1) The commodity pool operator, commodity trading advisor or investment adviser of the exempt pool offered or sold, or an affiliate of any of the foregoing;

(2) A principal of the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing;

(3) An employee of the exempt pool, commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the exempt pool, other commodity pools operated by the commodity pool operator of the exempt pool or other accounts advised by the commodity trading advisor or the investment adviser of the exempt pool, or by the affiliate; *Provided,* That such employee has been performing such functions and duties for or on behalf of the exempt pool, commodity pool operator, commodity trading advisor, investment adviser or affiliate, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months;

(4) Any other employee of the exempt pool, commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments); *Provided,* That such employee:

(i) Is an accredited investor as defined in § 230.501(a)(5) or (6) of this title; and

(ii) Has been employed by the exempt pool, commodity pool operator, commodity trading advisor, investment adviser or affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months; or

(5) The spouse, child, sibling or parent of a person who satisfies the criteria of paragraph (a)(2)(i)(H)(1), (2), (3) or (4) of this section; *Provided,* That:

(i) An investment in the exempt pool by any such family member is made with the knowledge and at the direction of the person; and

(ii) The family member is a qualified eligible participant only for the purposes of this paragraph (a)(2)(i)(H)(5);

(I) A trust; Provided, That:

(1) The trust was not formed for the specific purpose of participating in the exempt pool; and

(2) The trustee or other person authorized to make investment decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a qualified eligible participant;

(J) An organization described in section 501(c)(3) of the Internal Revenue Code (the ''IRC''); *Provided,* That the trustee or other person authorized to make investment decisions with respect to the organization, and the person who has established the organization, is a qualified eligible participant;

(K) A Non-United States person; or

(L) An entity in which all of the unit owners or participants are persons listed in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(ii) Persons who must satisfy the Portfolio Requirement to be qualified eligible participants. Qualified eligible participant means any person who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, satisfies the Portfolio Requirement and is:

(A) An investment company registered under the Investment Company Act or a business development company as defined in section 2(a)(48) of such Act not formed for the specific purpose of investing in the exempt pool;

(B) A bank as defined in section 3(a)(2) of the Securities Act of 1933 (the ''Securities Act'') or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account

or for the account of a qualified eligible participant;

(C) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible participant;

(D) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(E) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (''ERISA''); *Provided,* That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of $5,000,000; or, if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible participants;

(F) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act;

(G) An organization described in section 501(c)(3) of the IRC, with total assets in excess of $5,000,000;

(H) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of $5,000,000, and is not formed for the specific purpose of participating in the exempt pool;

(I) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase in the exempt pool exceeds $1,000,000;

(J) A natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(K) Except as provided for the governmental entities referenced in paragraph (a)(2)(ii)(D) of this section, if otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing; or

(L) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of participating in the exempt pool, and whose participation in the exempt pool is directed by a qualified eligible participant.

(3) Qualified eligible clients—(i) Persons who are qualified eligible clients irrespective of the Portfolio Requirement. Qualified eligible client means any person, acting for its own account or for the account of a qualified eligible client, who the commodity trading advisor reasonably believes, at the time that person opens an exempt account with the commodity trading advisor, is:

(A)(1) A person described in paragraph (a)(2)(i)(A), (B), (C), (D), (E), (F), (G) or (J) of this section;

(2) A person described in paragraph (a)(2)(i)(K) of this section; *Provided, however,* that the CTA who seeks to direct or guide the commodity interest trading account of the person:

(i) Provides commodity interest trading advice exclusively to persons who are qualified eligible clients, including persons described in paragraph (a)(2)(i)(K) of this section; and

(ii) Has filed a notice of claim for exemption pursuant to paragraph (c) of this section;

(B)(1) An affiliate of the commodity trading advisor of the exempt account;

(2) A principal of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor;

(3) An employee of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the commodity trading advisor or the affiliate; *Provided,* That such employee has been performing such functions and duties for or on behalf of the commodity trading advisor or the affiliate, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months;

(4) Any other employee of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments); *Provided,* That such employee:

(i) Is an accredited investor as defined in § 230.501(a)(5) or (6) of this title; and

(ii) Has been employed by the commodity trading advisor or the affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months; or

(5) The spouse, child, sibling or parent of the commodity trading advisor of the exempt account or of a person who satisfies the criteria of paragraph (a)(3)(i)(B)(1), (2), (3) or (4) of this section; *Provided,* That:

(i) The establishment of an exempt account by any such family member is made with the knowledge and at the direction of the trading advisor or person; and

(ii) The family member is a qualified eligible client only for the purposes of this paragraph (a)(3)(i)(B)(5);

(C) A Trust; *Provided,* That:

(1) The trust was not formed for the specific purpose of opening an exempt account with the commodity trading advisor; and

(2) The trustee or other person authorized to make investment decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a qualified eligible client;

(D) An exempt pool; or

(E) An entity in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are persons listed in paragraphs (a)(3)(i)(A) through (D) and (a)(3)(ii) of this section.

(F) Notwithstanding paragraph (a)(3)(ii) of this section, an entity as to which a notice of eligibility has been filed pursuant to § 4.5 which is operated in accordance with such rule and in which all unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible participants.

(ii) Persons who must satisfy the Portfolio Requirement to be qualified eligible clients. Qualified eligible client means any person who the commodity trading advisor reasonably believes, at the time that person opens an exempt account with the commodity trading advisor, satisfies the Portfolio Requirement and is:

(A) An investment company registered under the Investment Company Act or a business development company as defined in section 2(a)(48) of that Act not formed for the specific purpose of opening an exempt account with the commodity trading advisor;

(B) A bank as defined in section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible client;

(C) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible client;

(D) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(E) An employee benefit plan within the meaning of ERISA; Provided, That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of $5,000,000; or if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible clients;

(F) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act;

(G) An organization described in section 501(c)(3) of the IRC, with total assets in excess of $5,000,000;

(H) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of $5,000,000, and is not formed for the specific purpose of opening an exempt account with the commodity trading advisor;

(I) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time that person opens an exempt account exceeds $1,000,000;

(J) A natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has reasonable expectation of reaching the same income level in the current year;

(K) Except as otherwise provided in paragraph (a)(3)(ii)(D) of this section, if otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing;

(L) A trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of opening an exempt account with the commodity trading advisor, whose investment in the exempt account is directed by a qualified eligible client or participant.

(b) Relief for commodity pool operators. Subject to the conditions specified in paragraph (b)(2) of this section, any registered commodity pool operator who offers or sells participations in a pool solely to qualified eligible participants in an offering which qualifies for exemption from the registration requirements of the Securities Act pursuant to section 4(2) of that Act or pursuant to Regulation S, 17 CFR 230.901 *et seq.*, and any bank registered as a commodity pool operator in connection with a pool that is a collective trust fund whose securities are exempt from registration under the Securities Act pursuant to section 3(a)(2) of that Act and are offered or sold, without marketing to the public, solely to qualified eligible participants, may claim any or all of the following relief with respect to such pool by filing the notice required by paragraph (b)(2) of this section.

(1) Relief—(i) Disclosure. (A) Exemption from the specific requirements of §§ 4.21, 4.24, 4.25 and 4.26 with respect to each exempt pool; *Provided,* That if an offering memorandum is distributed in connection with soliciting prospective participants in the exempt pool, such offering memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently disclosed on the cover page of the offering memorandum, or, if none is provided, immediately above the signature line on the subscription agreement or other document that the prospective participant must execute to become a participant in the pool: ''PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH POOLS WHOSE PARTICIPANTS ARE LIMITED TO QUALIFIED ELIGIBLE PARTICIPANTS, AN OFFERING MEMORANDUM FOR THIS POOL IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A POOL OR UPON THE ADEQUACY OR ACCURACY OF AN OFFERING MEMORANDUM. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS OFFERING OR ANY OFFERING MEMORANDUM FOR THIS POOL.''

(B) Exemption from disclosing the past performance of exempt pools in the Disclosure Document of non-exempt pools except to the extent that such past performance is material to the non-exempt pool being offered; *Provided, however,* That a pool operator that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document of non-exempt pools shall state in a footnote to the performance disclosure therein that the operator is operating or has operated exempt pools whose performance is not disclosed in this Disclosure Document.

(ii) Periodic reporting. Exemption from the specific requirements of §§ 4.22(a) and (b); *Provided,* That a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must indicate:

(A) The net asset value of the exempt pool as of the end of the reporting period;

(B) The change in net asset value from the end of the previous reporting period; and

(C) The net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

(iii) Annual report. (A) Exemption from the specific requirements of §§ 4.22(c) and (d); *Provided,* That within 90 calendar days after the end of the exempt pool's fiscal year, the commodity pool operator files with the Commission and with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those sections, an annual report for the exempt pool, signed and affirmed in accordance with § 4.22(h) which contains, at a minimum:

(1) A Statement of Financial Condition as of the close of the exempt pool's fiscal year (elected in accordance with § 4.22(g));

(2) A Statement of Income (Loss) for that year; and

(3) Appropriate footnote disclosure and any other material information.

(B) Such annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 as applicable.

(C) Legend. (1) If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that

effect on the cover page of each annual report.

(2) If the annual report is not certified in accordance with § 1.16, the pool operator must make a statement to that effect on the cover page of each annual report and state that a certified audit will be provided upon the request of the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator.

(iv) Recordkeeping. Exemption from the specific requirements of § 4.23; *Provided,* That the commodity pool operator must maintain the reports referred to in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section and all books and records prepared in connection with his activities as the pool operator of the exempt pool (including, without limitation, records relating to the qualifications of qualified eligible participants and substantiating any performance representations) at his main business address and must make such reports and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(2) Notice of claim for exemption. (i) The notice of a claim for exemption under this section must:

(A) Be in writing;

(B) Provide the name, main business address, main business telephone number and the National Futures Association commodity pool operator identification number of the person claiming the exemption;

(C) Provide the name(s) of the pool(s) for which the request is made; *Provided,* That a single notice representing that the commodity pool operator anticipates operating single-investor pools may be filed to claim exemption for single-investor pools and such notice need not name each such pool;

(D) Contain representations that:

(1) Neither the commodity pool operator nor any of his principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph (b)(2)(i)(D);

(2) The commodity pool operator will comply with the applicable requirements of § 4.7; and

(3) The exempt pool will be offered and operated in compliance with the applicable requirements of § 4.7;

(E) Specify the relief claimed under § 4.7;

(F) State the closing date of the offering or that the offering will be continuous;

(G) Be signed by the pool operator, as follows:

If the pool operator is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(H) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(I)(1) Except as provided in paragraph (b)(2)(i)(C) of this section with respect to single-investor pools and in paragraph (b)(2)(i)(I)(2) of this section, be received by the Commission:

(i) Before the date the pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under paragraphs (b)(1)(ii), (iii) and (iv) of this section; or

(ii) Prior to any offer or sale of any participation in the exempt pool if the claimed relief includes that provided under paragraph (b)(1)(i) of this section.

(2) Where participations in a pool have been offered or sold in full compliance with this part 4, the notice of a claim for exemption may be filed with the Commission at any time; *Provided,* That the claim for exemption is otherwise consistent with the duties of the commodity pool operator and the rights of pool participants and that the commodity pool operator notifies the pool participants of his intention, absent objection by the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator within twenty-one days after the date of the notification, to file a notice of claim for exemption under § 4.7 and such holders have not objected within such period. A commodity pool operator filing a notice under this paragraph (b)(2)(i)(I)(2) shall either provide disclosure and reporting in accordance with the requirements of this part 4 to those participants objecting to the filing of such notice or allow such participants to redeem their units of participation in the pool within three months of the filing of such notice.

(ii) The notice will be effective upon receipt by the Commission with respect to each pool for which it was made; *Provided,* That any notice which does not include all the required information shall not be effective, and that if at the time the Commission receives the notice, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(iii) Any exemption claimed hereunder shall cease to be effective with respect to a particular pool upon any change which would cause the commodity pool operator for the pool to be ineligible for the relief claimed with respect to such pool. The commodity pool operator must promptly file a notice advising the Commission of such change.

(3) Any exemption from the requirements of § 4.21, 4.22, 4.23, 4.24, 4.25 or 4.26 with respect to a pool shall not affect the obligation of the commodity pool operator to comply with all other applicable provisions of Part 4, the Act and the Commission's rules and regulations, with respect to the pool and with respect to any other pool such pool operator operates or intends to operate.

(c) Relief for commodity trading advisors. Subject to the conditions specified in paragraph (c)(2) of this section and upon filing the notice required by paragraph (c)(2) of this section, any registered commodity trading advisor who anticipates directing or guiding the commodity interest accounts of qualified eligible clients will be exempt as follows with respect to the accounts of qualified eligible clients who have given due consent to their account being an exempt account under § 4.7.

(1) Relief—(i) Disclosure. (A) Exemption from the specific requirements of §§ 4.31, 4.34, 4.35 and 4.36; Provided, That if the commodity trading advisor delivers a brochure or other disclosure statement to such qualified eligible clients, such brochure or statement shall include all additional disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently displayed on the cover page of the brochure or statement or, if none is provided, immediately above the signature line of the agreement that the client must execute before it opens an account with the commodity trading advisor: ''PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH ACCOUNTS OF QUALIFIED ELIGIBLE CLIENTS, THIS

BROCHURE OR ACCOUNT DOCUMENT IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF COMMODITY TRADING ADVISOR DISCLOSURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS BROCHURE OR ACCOUNT DOCUMENT.''

(B) Exemption from disclosing the past performance of exempt accounts in the Disclosure Document for non-exempt accounts except to the extent that such past performance is material to the non-exempt account being offered; *Provided, however,* That a commodity trading advisor that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document for non-exempt accounts shall state in a footnote to the performance disclosure therein that the advisor is advising or has advised exempt accounts for qualified eligible clients whose performance is not disclosed in this Disclosure Document.

(ii) Recordkeeping. Exemption from the specific requirements of § 4.33; *Provided,* That the commodity trading advisor must maintain, at its main business office, all books and records prepared in connection with his activities as the commodity trading advisor of the qualified eligible clients (including, without limitation, records relating to the qualifications of such qualified eligible clients and substantiating any performance representations) and must make such records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(2) Notice of claim for exemption. (i) The notice of a claim for exemption under this section must:

(A) Be in writing;

(B) Provide the name, main business address, main business telephone number and the National Futures Association commodity trading advisor identification number of the person claiming the exemption;

(C) Contain a representation that the commodity trading advisor anticipates providing commodity interest trading advice to qualified eligible clients and that it will comply with the applicable requirements of § 4.7 with respect to accounts of such clients;

(D) Contain a representation that neither the commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph;

(E) Specify the relief claimed under § 4.7;

(F) Be signed by the commodity trading advisor, as follows: If the commodity trading advisor is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(G) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(H) Be received by the Commission before the date the commodity trading advisor first enters into an agreement to direct or guide the commodity interest account of a qualified eligible client pursuant to § 4.7.

(ii) The notice will be effective upon receipt by the Commission; *Provided,* That any notice which does not include all of the required information shall not be effective, and that if at the time the Commission receives the notice, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(iii) Any exemption claimed hereunder shall cease to be effective upon any change which would cause the commodity trading advisor to be ineligible for the relief claimed. The commodity trading advisor must promptly file a notice advising the Commission of such change.

(3) Any exemption from the requirements of § 4.31, 4.33, 4.34, 4.35 or 4.36 made hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of part 4, the Act and the Commission's rules and regulations, with respect to any qualified eligible client and with respect to any other client to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

(d) Insignificant deviations from a term, condition or requirement of § 4.7. (1) A failure to comply with a term or condition of § 4.7 will not result in the loss of the exemption with respect to a particular pool or client if the commodity pool operator or the commodity trading advisor relying on the exemption shows that:

(i) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular qualified eligible participant or client;

(ii) The failure to comply was insignificant with respect to the exempt pool as a whole or to the particular qualified eligible client of the commodity trading advisor; and

(iii) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 4.7.

(2) A transaction made in reliance on § 4.7 must comply with all applicable terms, conditions and requirements of § 4.7. Where an exemption is established only through reliance upon paragraph (d)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

Issued in Washington, D.C. on February 17, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

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RIN 1545–AX81

Tax Shelter Disclosure Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking and notice of public hearing.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations requiring certain corporate taxpayers to file a statement under section 6011 and maintain certain documents under section 6001. The temporary regulations affect corporations participating in certain reportable transactions. The text of

those temporary regulations also serves as the text of these proposed regulations. This document also gives notice of a public hearing on this subject.

DATES: Written comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, June, 20, 2000, from 10 a.m. through 1 p.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103735–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103735–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax—regs/regslist.html. A public hearing will be held at 10 a.m. on Tuesday, June 20, 2000, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Castanon or Mary Beth Collins, (202) 622–3070; concerning submissions and the hearings, Guy Traynor, (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by May 1, 2000. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 1.6011–4T(a), (c), (d), and (e). This information is required to provide the Service with notice of certain large corporate transactions that provide tax savings in excess of certain dollar thresholds. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 25 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 30 minutes.

Estimated number of respondents and/or recordkeepers: 50.

Estimated annual frequency of responses: Once annually.An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations amend the Income Tax regulations (26 CFR part 1) relating to section 6011. The temporary regulations contain rules relating to the filing and records requirements for certain corporate taxpayers.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for filing the statement required by these regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

Further, the IRS and Treasury specifically request comments on (1) the scope and breadth of the characteristics used in the proposed regulations to identify reportable transactions; (2) the exceptions to disclosure provided for in the proposed regulations; and (3) whether particular types of transactions should be identified as excepted from disclosure. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 20, 2000, from 10 a.m. through 1 p.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 1111 Constitution Avenue entrance, located between 10th and 12th streets. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the access list to attend the

hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 31, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Part 1—INCOME TAXES

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

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

Par. 2. Section 1.6011–4 is added to read as follows:

§ 1.6011–4 Requirement of statement disclosing participation in certain transactions by corporate taxpayers.

[The text of this proposed section is the same as the text of § 1.6011–4T published elsewhere in this issue of the **Federal Register**.]

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–4843 Filed 2–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–103736–00]

RIN 1545–AX79

Requirement To Maintain List of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking and notice of public hearing.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations requiring the maintenance of lists of investors in potentially abusive tax shelters described in section 6112. The temporary regulations affect organizers of potentially abusive tax shelters. The text of those temporary regulations also serves as the text of these proposed regulations. This document also gives notice of a public hearing on this subject.

DATES: Written comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, June, 20, 2000, from 10 a.m. through 1 p.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103736–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103736–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax__regs/regslist.html. A public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Castanon or Mary Beth Collins, (202) 622–3070; concerning submissions and the hearings, Guy Traynor, (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by May 1, 2000. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 301.6112–1T, A–4, A–13, A–14, A–17, and A–22. This information is required to comply with the list maintenance requirement of section 6112 and to avoid the penalty provisions of section 6708 for failing to maintain the investor list under section 6112. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 102 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 2.04 hours.

Estimated number of respondents and/or recordkeepers: 50.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control

number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations amend temporary Procedure and Administration regulations (26 CFR Part 301) regarding the requirement to maintain lists of investors in potentially abusive tax shelters under section 6112. Section 6708 provides penalties for failing to maintain the investor list under section 6112.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for maintaining the investor lists described in the regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 22, 2000, from 10 a.m. to 1 p.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 1111 Constitution Avenue entrance, located between 10th and 12th Streets. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 31, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes,Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

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

Section 301.6112–1 also issued under 26 U.S.C. 6112. * * *

§ 301.6112–1 [Amended]

Par. 2. Section 301.6112–1 as proposed at 49 FR 34246 (August 29, 1984) is amended as follows:

[The text of the amendments to this proposed section is the same as the text of the amendments to § 301.6112–1T published elsewhere in this issue of the **Federal Register**.]

Charles O. Rosotti,

Commissioner of Internal Revenue.

[FR Doc. 00–4847 Filed 2–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–110311–98]

RIN 1545–AW26

Corporate Tax Shelter Registration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking and notice of public hearing.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations requiring the registration of confidential corporate tax shelters pursuant to section 6111(d) as amended by section 1028(a) of the Taxpayer Relief Act of 1997 (the Act). The temporary regulations affect persons responsible for registering confidential corporate tax shelters and corporations participating in confidential corporate tax shelters. The text of those temporary regulations also serves as the text of these proposed regulations. This document also gives notice of a public hearing on this subject.

DATES: Written comments must be received by May 31, 2000.

Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, June, 20, 2000, from 10 a.m. through 1 p.m. must be received by May 31, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–110311–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–110311–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW.,

Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax__regs/regslist.html. A public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Richard Castanon or Mary Beth Collins, (202) 622–3070; concerning submissions and the hearings, Guy Traynor, (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by May 1, 2000. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 301.6111–2T(b)(6), (e)(1)(ii)(A), (e)(2), (e)(3), (g)(2)(ii) and (g)(2)(iii). This information is required to comply with the registration requirements of section 6111(d) and to avoid the penalty provisions of section 6707 for failing to register a confidential corporate tax shelter. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are business or other for-profit institutions.

The burden for the collection of information in § 301.6111–2T(b)(6), (e)(1)(ii)(A), (e)(2), and (e)(3) will be reflected on Form 8264. The burden for the collection of information in § 301.6111–2T(g)(2)(ii) and (iii) is as follows:

Estimated total annual reporting and/or recordkeeping burden: 1 hour.

Estimated average annual burden hours per respondent and/or recordkeeper: 15 minutes.

Estimated number of respondents and/or recordkeepers: 4.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations amend temporary procedure and administrative regulations (26 CFR part 301) relating to section 6111. These regulations provide the guidance necessary to activate the registration requirements of section 6111 and the penalty provisions of section 6707 for confidential corporate tax shelters.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the persons responsible for promoting and registering the transactions described in the regulations are principally large publicly traded corporations, and the burden is not significant as described earlier in the preamble. 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

Further, the IRS and Treasury specifically request comments on (1) the scope and breadth of the characteristics used in the proposed regulations to identify transactions structured for the avoidance or evasion of Federal income tax; (2) the exceptions to registration provided for in the proposed regulations; and (3) whether particular types of transactions should be identified as excepted from registration. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 20, 2000, from 10 a.m. through 1 p.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 1111 Constitution Avenue entrance, located between 10th and 12th streets. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to

each topic (signed original and eight (8) copies) by May 31, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Mary Beth Collins and Richard Castanon, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

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

Section 301.6111–2 also issued under 26 U.S.C. 6111(f)(4).

* * * * *

Par. 2. Section 301.6111–2 is added to read as follows:

§ 301.6111–2 Confidential corporate tax shelters.

[The text of this proposed section is the same as the text of § 301.6111–2T published elsewhere in this issue of the **Federal Register**.]

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–4845 Filed 2–28–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–00–010]

RIN 2115–AE46

Special Local Regulations: Miami Super Boat Grand Prix, Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Temporary Special Local Regulations are being proposed for the Miami Super Boat Grand Prix. The event will be held from 11 a.m. to 3 p.m. on April 30, 2000, offshore Miami Beach, FL. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before April 17, 2000.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Group Miami, 100 McArthur Causeway, Miami Beach, FL 33139. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Petty Officer Rick Storey, Coast Guard Group Miami at (305) 535–4472.

SUPPLEMENTARY INFORMATION:

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of their inherent danger of high speed competition boat racing in the vicinity of spectator craft during the Miami Super Boat Grand Prix, Miami Beach, FL. Although a permanent regulation has been established for this event (33 CFR 100.730), the organizers asked that the event be moved for this year to April 30. The permanent regulations create a regulated area that prohibit non-participating vessels from entering the regulated area during the event. The practical effect of this proposed rule is to change the date of the event for this year from the third Sunday in April until April 30th, and to slightly modify the boundaries of the spectator area.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD07–00–010] and the specific section of this proposal to which their comments apply and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8″x11″ unbound format suitable for copying and electronic filling. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans on public hearings. Persons may request a public hearing by writing to Commander Coast Guard Group Miami at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Regulatory Evaluation

This proposal 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 expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The regulated area will only be in effect for 4½ hours on one day.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small business, 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 as the regulations will only be in effect for 4½ hours in a limited area of Miami Beach, FL.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may sent comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman the Regional Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposal calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this proposal and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. Temporary § 100.35T–07–010 is added to read as follows:

§ 100.35T–07–010 Miami Superboat Grand Prix, Miami Beach, FL.

(a) *Regulated Area:* A regulated area is established 1000 feet off shore of Miami Beach FL from Miami Beach Clock Tower to Atlantic Heights. The regulated area for the race course is defined by a line joining the following coordinates: 25°51.38′ N., 080°06.84′ W., thence to 25°46.54′ N., 080°07.40′ W., thence to 25°46.60′ N., 080°07.18′ W., thence to 25°51.37′ N., 080°06.71′ W., thence to the starting point.

(b) *Spectator Area:* The spectator area is defined by a line joining the following coordinates: 25°50.56′ N., 080°06.60′ W., thence to 25°47.21′ N., 080°06.91′ W., thence to 25°47.20′ N., 080°06.55′ W., thence to 25°50.54′ N., 080°06.25′ W., thence to the starting point. All coordinates reference use Datum: NAD 1983.

(c) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Miami, FL.

(d) *Special Local Regulations:* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft must remain in the spectator area as established by these regulations.

(e) *Dates:* This section becomes effective at 10:45 a.m. and terminates at 3:15 p.m. EST on April 30, 2000.

Dated: February 18, 2000.

G.W. Sutton,

Captain, Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 00–4998 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 154–0211; FRL–6544–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for ozone. These revisions concern the control of oxides of nitrogen (NO_X) from cement kilns. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments on this proposed action must be received in writing on or before April 3, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

FOR FURTHER INFORMATION CONTACT: Max Fantillo, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for limited approval and limited disapproval into the SIP is Mojave Desert Air Quality Management District (MDAQMD) Rule 1161, Portland Cement Kilns. This rule was submitted by the California Air Resources Board (CARB) to EPA on June 29, 1995.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a proposed rule entitled, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Southeast Desert Air Basin managed by MDAQMD is classified as severe,[1] therefore this area was subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions, are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for MDAQMD, Rule 1161, Portland Cement Kilns. MDAQMD adopted Rule 1161 on June 28, 1995. The State of California submitted this rule on June 29, 1995. Rule 1161 was found to be complete on July 3, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[2]

NO_X emissions contribute to the production of ground level ozone and smog. Rule 1161 controls emissions of oxides of nitrogen (NO_X) from portland cement kilns within MDAQMD area. The rule was adopted as part of MDAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

There is currently no version of MDAQMD's Rule 1161, Portland Cement Kilns, in the SIP. The submitted rule includes the following provisions: applicability, exemptions, emission limits, compliance determination, compliance alternative, test methods, monitoring and recordkeeping, and compliance schedule.

With exception of the deficiencies discussed below, EPA has determined that the emission limits and other provisions of Rule 1161 meet the RACT requirement of section 182(b). Although Rule 1161, Portland Cement Kilns, will strengthen the SIP, this rule contains the

[1] Southeast Desert Air Basin managed by MDAQMD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

following appendix D/RACT deficiencies:

• The Alternative Compliance Strategy (ACS) is not approvable as written because it lacks substantive detail. ACS provisions must be consistent with the EPA Emissions Trading Policy Statement (ETPS), the Economic Incentive Program Rules (EIP), and EPA policies regarding alternative control and alternative methods of compliance. The EIP and other EPA policies require bubble provisions to meet, among other things, a 10 percent (%) or greater reduction in emissions beyond the established baseline.

• The rule allows exemption from the emission limits during start-up/shutdown(su/sd). EPA policy on excess emissions during su/sd generally disallows automatic exemption from emission limits during these periods. Automatic exemptions might aggravate ambient air quality by excusing excess emissions that cause or contribute to a violation of an ambient air quality standard.

• The rule references submitted Rule 430 which is not State Implementation Plan (SIP) approved. Referenced rules must be SIP approved.

A more detailed discussion of the sources controlled, the controls required, justification for why these controls represent RACT, and the rule deficiencies can be found in the Technical Support Document (TSD), dated December 29, 1999.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of MDAQMD'S submitted Rule 1161 under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section (110)(a) and part D. At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), and part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the MDAQMD and is currently in effect in the MDAQMD area. EPA's final limited disapproval action will not prevent MDAQMD or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, 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.

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 Executive Order 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 Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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, Executive Order 13084 requires EPA to develop an effective process permitting elected officials 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 Executive Order 13084 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 17, 2000.

Felicia Marcus,

Regional Administrator Region IX.

[FR Doc. 00–5041 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6545–3]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Arizona Department of Environmental Quality; Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act (CAA), the Maricopa County Environmental Services Department (MC) in Arizona requested delegation of specific national emission standards for hazardous air pollutants (NESHAPs). In the Rules section of this **Federal Register**, EPA is granting MC the authority to implement and enforce specified NESHAPs. The direct final rule also explains the procedure for future delegation of NESHAPs to MC. EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, 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. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by April 3, 2000.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted requests are available for public inspection at EPA's Region IX office during normal business hours (docket number A–96–25).

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns delegation of unchanged NESHAPs to the Maricopa County Environmental Services Department and the Arizona Department of Environmental Quality. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: February 18, 2000.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 00–5037 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 503

[FRL –6546–3]

RIN 2040–AC25

Standards for the Use or Disposal of Sewage Sludge; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reopening of Comment Period.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing a reopening of the public comment period to March 23, 2000 for its Proposed Rule on Standards for the Use or Disposal of Sewage Sludge which was published in the **Federal Register** on December 23, 1999 at (64 FR 72045).

DATES: The comment period is reopened until March 23, 2000.

ADDRESSES: Written comments and enclosures should be mailed or hand-delivered to: Part 503 Sewage Sludge Use or Disposal Rule; Docket Number W–99–18, Comment Clerk, Water

Docket MC–4101, Environmental Protection Agency, Room 57 East Tower Basement, 401 M Street, SW, Washington, DC 20460. Comments may also be submitted electronically to *OW-Docket@epamail.epa.gov*. For additional information see Additional Docket Information in the **SUPPLEMENTARY INFORMATION** section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Arleen Plunkett, U.S. Environmental Protection Agency, Office of Water, Health and Ecological Criteria Division (4304), 401 M Street, SW., Washington, DC 20460. (202) 260–3418.

SUPPLEMENTARY INFORMATION:

Additional Docket Information

The record for this rulemaking has been established under docket number W–99–18 and includes supporting documentation as well as the printed paper versions of electronic materials. When submitting written comments to the Water Docket, (see **ADDRESSES** section above) please reference docket number W–99–18 and submit an original and three copies of your comments and enclosures (including references). For an acknowledgment that we have received your information, please include a self-addressed, stamped envelope. EPA will not accept facsimiles (faxes). Comments may also be submitted electronically to: *OW-Docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by docket number W–99–18. Comments and data will also be accepted on discs in WP5.1, WP6.1, WP8, or ASCII file format. To ensure that EPA can read, understand, and, therefore, properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commentors should use a separate paragraph for each issue.

The record is available for inspection from 9:00am to 4:00pm Eastern Standard or Daylight time, Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M Street, SW, Washington, D.C. 20460. For access to the docket materials, please call 202–260–3027 to schedule an appointment.

For information on the existing rule in 40 CFR Part 503, you may obtain a copy of A Plain English Guide to the EPA Part 503 Biosolids Rule on the Internet at *http://www.epa.gov/owm/bio.htm* or request the document (EPA publication number EPA/832/R–93/003) from: Municipal Technology Branch, Office of Wastewater Management (4204), Office of Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Background

On December 23, 1999, EPA (64 FR 72045) proposed to amend management standards for sewage sludge by adding a numeric concentration limit for dioxin and dioxin-like compounds (''dioxins'') in sewage sludge that is applied to the land, and monitoring, record keeping and reporting requirements for dioxins in sewage sludge that is land applied. EPA did not propose additional numeric standards or management practice requirements for dioxins in sewage sludge that is placed in surface disposal units or incinerated in sewage sludge incinerators. The proposal was based on the results of risk assessments for dioxins in sewage sludge that is applied to the land, placed in surface disposal units, or incinerated.

EPA established a 60-day public comment period which is scheduled to close on February 22, 2000. Subsequently, we received requests to extend the public comment period. The requests were based on the time that it would take to review the technical support documents of the proposed rule. We agree that a reopening is warranted to allow adequate time for the review of the technical support documents for this proposal. Therefore, the public comment period will now close on March 23, 2000.

Dated: February 24, 2000.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 00–5044 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 65, No. 42
Thursday, March 2, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 00–001–2]

Declaration of Emergency Because of Plum Pox Virus

An exotic plant virus, plum pox virus, has been detected in the United States. The disease was detected in Pennsylvania and had not previously been detected in the United States.

Plum pox virus is the cause of an extremely serious plant disease, affecting a number of *Prunus* species, including peach, nectarine, apricot, plum, and almond. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. There is no cure or treatment for the disease once a tree becomes infected. In Europe, where plum pox has been present for a number of years, the disease is considered to be the most serious disease affecting susceptible *Prunus* species. The disease is spread over short distances by a number of different aphid species, and over longer distances through the movement of infected budwood and nursery stock. The strain of virus now present in the United States is known not to be seed-transmitted.

If plum pox is allowed to become established and to spread, the overall crop loss and impact on quality could be significant. The estimated annual value of stone fruit at the farm gate for the entire United States is at least $1.8 billion. If steps are not taken to eradicate plum pox in the very limited area in Pennsylvania where it is now known to be present, there is every possibility the disease will eventually spread to other areas in the United States where host crops are produced. This would result in substantial losses to producers of these important fruit crops, and to those industries that transport, process, or otherwise utilize this fruit. Consumers would also be affected by a reduction in the quantity and quality of fruit available, and by increased prices.

There are three components to controlling and eradicating plum pox: (1) A regulatory program to prevent the movement of plant material infected with plum pox virus from the area where it is now known to be present to other areas where the host plants are likely to be present; (2) a survey program adequate to detect any additional infestations of plum pox virus that may be present; and (3) a control program to remove all infested orchards. Initial action was taken by the Pennsylvania Department of Agriculture (PDA). The PDA has instituted a quarantine that encompasses the two townships that include the area where plum pox virus is now known to be present. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture intends to establish a parallel Federal quarantine of this area.

APHIS has insufficient funds to conduct the control and eradication programs deemed necessary to protect stone fruit production areas. Once funded, APHIS can continue a control and eradication program.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency that threatens the stone fruit crops of this country, and I authorize the transfer and use of such sums as may be necessary from appropriations or other funds available to agencies or corporations of the United States Department of Agriculture for the conduct of a program to control and prevent the spread of plum pox to noninfested areas of the United States, and to eradicate plum pox wherever it may be found in the United States.

EFFECTIVE DATE: This declaration of emergency shall become effective January 20 , 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–4987 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 00–001–1]

Declaration of Extraordinary Emergency Because of Plum Pox Virus

An exotic plant virus, plum pox virus, has been detected in the United States. The disease was detected in Pennsylvania and had not previously been detected in the United States.

Plum pox virus is the cause of an extremely serious plant disease, affecting a number of *Prunus* species, including peach, nectarine, apricot, plum, and almond. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. There is no cure or treatment for the disease once a tree becomes infected. In Europe, where plum pox has been present for a number of years, the disease is considered to be the most serious disease affecting susceptible *Prunus* species. The disease is spread over short distances by a number of different aphid species, and over longer distances through the movement of infected budwood and nursery stock. The strain of virus now present in the United States is known not to be seed-transmitted.

If plum pox is allowed to become established and to spread, the overall crop loss and impact on quality could be significant. The estimated annual value of stone fruit at the farm gate for the entire United States is at least $1.8 billion. If steps are not taken to eradicate plum pox in the very limited area in Pennsylvania where it is now known to be present, there is every possibility the disease will eventually spread to other areas in the United States where host crops are produced. This would result in substantial losses to producers of these important fruit crops, and to those industries that transport, process, or otherwise utilize this fruit. Consumers would also be affected by a reduction in the quantity and quality of fruit available, and by increased prices.

There are three components to controlling and eradicating plum pox: (1) A regulatory program to prevent the movement of plant material infected with plum pox virus from the area where it is now known to be present to other areas where the host plants are

likely to be present; (2) a survey program adequate to detect any additional infestations of plum pox virus that may be present; and (3) a control program to remove all infested orchards. Initial action was taken by the Pennsylvania Department of Agriculture (PDA). The PDA has instituted a quarantine that encompasses the two townships that include the area where plum pox virus is now known to be present. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (the Department) intends to establish a parallel Federal quarantine of this area.

It is essential to the control and eradication of the plum pox virus that orchards known to be infested be removed promptly, along with any additional orchards that are determined to be infested in surveys to be conducted this spring. The Department has reviewed the measures being taken by Pennsylvania to survey, regulate, and control plum pox virus and has consulted with the Governor of Pennsylvania. Based on such review and consultation, the Department has determined that Pennsylvania does not have authority or funds to compensate growers for the removal of infested orchards. Without such funds, it will be unlikely to achieve expeditious removal of the orchards.

The infestation of plum pox virus represents a threat to U.S. stone fruit crops. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. Therefore, the Department has determined that an extraordinary emergency exists because of the existence of plum pox virus in Pennsylvania.

In accordance with 7 U.S.C. 150dd, this declaration of extraordinary emergency authorizes the Secretary to: (1) Seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Secretary deems appropriate, any product or article of any character whatsoever, including means of conveyance, that the Secretary has reason to believe is infected by or contains the plum pox virus; and (2) quarantine, treat, or apply other remedial measures to, in such manner as the Secretary deems appropriate, any premises, including articles on such premises, that the Secretary has reason to believe are infected by or contaminated by the plum pox virus. The Governor of Pennsylvania has been informed of these facts.

EFFECTIVE DATE: This declaration of extraordinary emergency shall become effective January 20 , 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–4988 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned invention U.S. Patent No. 5,968,541, issued October 19, 1999, entitled ''Composition and Method for the Control of Diabroticite Insects'' is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Florida Food Products, Inc., of Eustis, Florida, an exclusive license to Serial No. 08/917,852.

DATES: Comments must be received on or before May 31, 2000.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention is assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Florida Food Products, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.

Assistant Administrator.

[FR Doc. 00–4989 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–008–1]

Public Meetings; Imported Fire Ant

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings and request for comments.

SUMMARY: The Animal and Plant Health Inspection Service plans to hold four public meetings to discuss issues related to how we should administer our imported fire ant program in light of reduced funding.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by May 1, 2000.

The public meetings will be held in: (1) Raleigh, NC, on March 21, 2000; (2) Orlando, FL, on March 23, 2000; (3) Austin, TX, on March 28, 2000; and (4) Santa Ana, CA, on March 30, 2000. Each public meeting will begin at 9 a.m. and is scheduled to end at 5 p.m.

ADDRESSES: If you cannot attend a public meeting, please send your written comment and three copies to: Docket No. 00–008–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–008–1.

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

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

The public meetings will be held at the following locations:

(1) Raleigh, NC: Wake County Commons Buildings, 4011 Carya Drive, Raleigh, NC.

(2) Orlando, FL: Radisson Barcelo Hotel, 8444 International Drive, Orlando, FL.

(3) Austin, TX: Clements Building, Committee Room 5, 15th and Lavaca Streets, Austin, TX.

(4) Santa Ana, CA: Hall of Administration, Board of Supervisors Ante Room—First Floor, 10 Civic Center Plaza, Santa Ana, CA.

FOR FURTHER INFORMATION CONTACT: Ron Milberg, Operations Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) plans to hold four public meetings to discuss how we should administer our imported fire ant program in light of reduced funding.

Our imported fire ant program is based on our imported fire ant regulations (7 CFR 301.81–1 through 301.81–10, referred to below as the regulations). The regulations govern the interstate movement of regulated articles from areas quarantined because of imported fire ant. Section 301.81–2 of the regulations provides a list of articles regulated because of imported fire ant. Regulated articles are imported fire ant queens and reproducing colonies of imported fire ants, soil (except potting soil shipped in its original container), baled hay or straw stored in direct contact with the ground, nursery stock (except plants maintained indoors in a home or office environment and not for sale), used soil-moving equipment, and any other article determined to present a risk of spreading imported fire ant. Section 301.81–3 of the regulations lists areas quarantined because of imported fire ant. Quarantined areas are all or portions of the following States and territories: Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas. Sections 301.81–4 through 301.81–10 provide requirements for moving regulated articles interstate from quarantined areas to nonquarantined areas. These sections include requirements for certificates and limited permits and for treatment of regulated articles.

For fiscal year (FY) 2000, Congress gave APHIS $100,000 to cover the costs of administering the imported fire ant program and directed APHIS to use $58,000 of that amount to administer the program in New Mexico. Although $100,000 is considerably less than the amount allotted to the program for FY 1999, this amount is actually more than APHIS requested. For several years, APHIS has sought to eliminate its imported fire ant control activities because no economical, environmentally acceptable control agents specific to imported fire ant are available for large-scale application on agricultural land. Also, APHIS has not received any requests from States for cooperative treatment programs since 1985. In past years, APHIS has provided States with technical knowledge, treatment guidelines, and regulatory guidelines to help control imported fire ant populations; the States have conducted regulatory and survey activities. Through this arrangement, States have maintained a strong regulatory program and have even eradicated small, isolated infestations outside quarantined areas.

In support of these efforts to control imported fire ant, APHIS successfully tested the insecticide fipronil in FY 1998. Fipronil would be used to treat nursery stock and grass sod moving interstate from quarantined areas. The U.S. Environmental Protection Agency (EPA) is currently reviewing this insecticide; it may be registered by the EPA for use in the spring of 2001. APHIS plans to continue to evaluate the efficacy of new regulatory treatments for imported fire ant under its plant methods development laboratories? budget line item.

The public meetings will provide an opportunity for interested persons to comment on whether APHIS should continue to administer the imported fire ant program in accordance with the regulations (and if so, how we should manage the program in light of current funding) or if we should pursue another course of action. Please note, however, that while the information gathered during the meetings may indicate the need for changes to our current regulatory program, the meetings will not directly result in any changes to the regulations. If we determine that changes to the regulations are appropriate, we will propose those changes in the **Federal Register**.

Issues

We have identified three potential courses of action with respect to the imported fire ant program. They are:

(1) Maintain our imported fire ant program with minimal Federal regulatory activity, in line with current funding.

This option would, through APHIS regulations, continue to provide uniform standards for the regulated industry and consistent interstate shipping requirements. Under this option, States would continue to enforce the Federal quarantine without Federal funding. When alerted by States, APHIS personnel would continue to investigate noncompliance with the regulations and examine the origin and pathway of introduction of imported fire ants found on regulated articles.

(2) Eliminate the imported fire ant regulations (*i.e.,* rescind the Federal quarantine) and develop model guidelines for States to use in harmonizing their quarantines.

This option would reduce Federal resource requirements and may provide uniformity without Federal regulation. However, in the absence of Federal regulations, States may independently impose more or less stringent requirements for the entry of currently regulated articles. Requirements could differ from State to State.

(3) Eliminate the imported fire ant regulations (*i.e.,* rescind the Federal quarantine) and establish a voluntary nursery self-certification program.

This option would also reduce Federal resource requirements and may provide uniformity without Federal regulation. However, a voluntary self-certification program is not a mandatory program and could, therefore, result in less than 100 percent participation by producers.

Comments on these, or any other options, are welcome during the public meetings.

Meeting Procedures/Registration

A representative of APHIS will preside at each public meeting. Any interested person may appear and be heard in person, by attorney, or by another representative. Written statements may be submitted and will be made part of the meeting record. Persons who wish to speak at a meeting will be asked to provide their names and organizations. We ask that anyone who reads a statement or submits a written statement provide two copies to the presiding officer at the meeting.

Registration for each public meeting will take place from 8:30 a.m. to 9 a.m. on the day of the meeting at the meeting room. Each public meeting will begin at 9 a.m. and is scheduled to end at 5 p.m., local time. However, any meeting may end at any time after it begins if all persons desiring to speak have been heard. If the number of speakers at a meeting warrants it, the presiding officer may limit the time for presentations so that everyone wishing to speak has the opportunity.

Written Comments

If you cannot attend a public meeting, you may submit written comments on the issues raised in this notice. To submit written comments, please follow the instructions listed under the heading **ADDRESSES** near the beginning of this document.

Done in Washington, DC, this 24th day of February 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–5053 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–006N]

Exemption for Retail Stores; Adjustment for Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) has increased the limitation on annual sales of meat and meat food products by retail stores whose operations are exempt from Federal inspection. The dollar limitation for poultry products has been kept unchanged at $39,000 for calendar year 2000. The dollar limitation for meat and meat food products has been increased from $41,000 to $42,500 for calendar year 2000. This increase conforms to the price change for meat and meat food products indicated by the Consumer Price Index.

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel L. 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.

SUPPLEMENTARY INFORMATION

Background

Under the regulations in 9 CFR 303.1(d) and 381.10(d), FSIS exempts certain operations of types traditionally and usually conducted at retail stores from routine Federal inspection of meat and poultry products. Whether a retail store operation qualifies for an exemption depends, in part, on the percentage and volume of trade in meat and poultry products that a retail store conducts with non-household consumers (hotels, restaurants, or similar institutions). The regulations state in dollars the annual maximum amount of meat and poultry products that a retail store may sell to non-household consumers if that store's operations are to remain exempt from inspection.

FSIS adjusts the dollar limitation during the first quarter of each calendar year if the Consumer Price Index, published by the Bureau of Labor Statistics, indicates at least a $500 increase or decrease in the price of the same volume of product during the previous year. FSIS publishes a notice of the adjusted dollar limitation in the **Federal Register**.

The Consumer Price Index for 1999 indicates an average annual price increase in meat and meat food products of 3.6 percent and an average annual price decrease in poultry products of 2.8 percent. When rounded off to the nearest $100, the price increase for meat and meat food products amounts to $1,500 and the price decrease for poultry products amounts to $200. Prices of meat and meat food products, therefore, have changed in excess of $500, and those of poultry have decreased by less than $500. In accordance with §§ 303.1(d)(2)(iii)(b) and 381.10(d)(2)(iii)(b) of the regulations, FSIS has increased the dollar limitation of permitted sales of meat and meat food products from $41,000 to $42,500 and has kept the dollar limitation of permitted sales for poultry products at $39,000.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, 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.

Done at Washington, DC, on: February 24, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–5055 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision to Solitude Mountain Resort Master Development Plan Update, Wasatch-Cache National Forest, Salt Lake Ranger District, Salt Lake County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Salt Lake Ranger District, of the Wasatch-Cache National Forest, will conduct a new public scoping process and prepare an EIS on Solitude Ski Resort's (Solitude) revised proposal to update their Master Development Plan.

DATES: Comments concerning the scope of the analysis should be received in writing by April 4, 2000.

ADDRESSES: Send written comments to Daniel J. Jiron, District Ranger, 6944 South 3000 East, Salt Lake City, Utah 84121.

FOR FURTHER INFORMATION CONTACT: Steve Scheid, Project Manager, (801) 733–2689.

SUPPLEMENTARY INFORMATION: Solitude is proposing to revise its Master Development Plan Update. During the spring and summer of 1995, Solitude Ski Resort submitted to the Forest Service an updated Master Development Plan (MDP) detailing proposed ski area and facility modifications. Public comment was initially solicited on August 4, 1995 through the issuance of a scoping document, followed by a public meeting on August 25, 1995. A second public scoping notice was issued for Solitude in July 1996, after the Forest Service determined that an EIS needed to be prepared. A public field review was also held in September 1997 to view and discuss proposed projects and potential alternatives for Solitude's MDP update.

The planning horizon for Solitude's original MDP update was approximately five years. Due to the substantial elapse of time (four years), there is now a need to extend the planning horizon of Solitude's MDP update. In addition, Solitude's desire to address public and Agency issues pertaining to their proposed facilities has resulted in a

number of additions and modifications to the MDP update. The vast majority of projects originally proposed for Solitude's MDP update remain unchanged. Solitude's proposal, if approved, would require Forest Plan amendments to incorporate projects located outside its special use permit boundary; install the proposed Sol-Bright lift; meet the proposed expansion of Solitude's skiers at one time (SAOT) capacity; meet visual quality objectives (VQO's) for existing and proposed parking areas and the proposed Highway accelerations and deceleration lane improvements.

Solitude proposes to improve their base facilities by replacing their outdated Main and Eagle Express lodges with two new buildings, which will house ski operations, skier services (restrooms, food service, day care, ski school and ski patrol) and a connected Salt Lake County Fire Station. They also propose to construct additions to the existing Moonbeam Center and Last Chance Mining Camp day lodges to help alleviate overcrowded conditions.

Solitude's proposed base area projects include the following: a landing pad for rescue helicopters, recreational vehicle hookups, expanding Moonbeam parking lot, upgrading base transportation and visitor circulation systems, a satellite and communications base station, and upgrading the snowmaking system (stream diversion points, a pump house and dredging Lake Solitude) to provide snowmaking capacity for 250 acres.

Solitude is also proposing to upgrade its lift system by constructing three new double chairlifts, a pulse gondola for internal resort (base area) transportation and upgrading three existing lifts to high-speed detachable quads. They are also proposing numerous improvements to their trail system and a new trail near the Sunrise lift. Solitude is also proposing to provide lighted nighttime activities including sliding, snowboarding, skiing, and ice skating adjacent to the Village base area. Solitude is also proposing summertime recreation use improvements by upgrading its mountain bike trail system and constructing an alpine slide.

Additional information on the proposed actions is available through the Salt Lake Ranger District office. Before any decision is made on this proposal, Solitude must obtain the following: a water change application from the Utah Department of Natural Resources, Division of Water Rights, State Engineer; all applicable building permits from Salt Lake County; a 404 permit from the Army Corps of Engineers; and consultation with the Environmental Protection Agency.

A scoping document, dated August 4, 1995, was sent to more than 540 individuals, organizations, and local and state government agencies. A second scoping notice, dated July 16, 1996 was sent to more than 250 individuals, organizations, and local and state government agencies. Preliminary issues identified by a Forest Service interdisciplinary team include effects on riparian and wetland areas, visual quality, transportation, parking, wildlife and vegetation, soil erosion, and water quality and quantity in a culinary watershed. Two preliminary alternatives have been identified. The proposed action alternative would permit Solitude to implement all of its proposed upgrades and may require Solitude to convert to a new Ski Area Term Special Use Permit. The no action alternative would permit use as it presently exists with no new improvements.

The public is invited to submit comments or suggestions to the address above. The responsible official is Bernie Weingrardt, Forest Supervisor. A Draft EIS is expected to be filed in December of 2000 and the final EIS filed in November of 2001.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in this proposed action participate during that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that the reviewers of the draft EIS 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). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel,* (9th Circuit, 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Dated: February 25, 2000.

Daniel J. Jiron,

District Ranger.

[FR Doc. 00–5005 Filed 3–1–00; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 1 p.m. on Tuesday, March 14, 2000, at the Holiday Inn-South/Convention Center, 6820 South Cedar Street, Lansing, Michigan 48911. The purpose of the meeting is to hold a press conference to release the Committee's report, Employment Rehabilitation Services in Michigan. The Committee will also review and act on its report, ''Civil Rights Issues Facing Arab Americans,'' and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Roland Hwang, 517–373–1480, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 25, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–4982 Filed 3–1–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Michael Grossman, at (202) 482–1775 or (202) 482–3146, respectively, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (''the Department'') to 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 these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On July 29, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide from the Netherlands, covering the period June 1, 1998 through May 31, 1999 (64 FR 41075). The preliminary results are currently due no later than March 1, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than June 29, 2000. *See* Decision Memorandum from John Brinkmann, Acting Director, AD/CVD Enforcement, Office VI, to Holly Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, dated February 14, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. 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: February 24, 2000.

Holly Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 00–5076 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon From Chile: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION: Edward Easton at (202) 482–3003, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, 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 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 determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the Date of publication of the preliminary determination.

Background

On August 30, 1999, the Department published a notice of initiation of administrative review of the antidumping order on Fresh Atlantic Salmon from Chile, covering the period July 28, 1998, through June 30, 1999 (64 FR 47167). The preliminary results are currently due no later than March 31, 2000.

Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, we are extending the time limit for completion of the preliminary results until no later than July 31, 2000. *See* Decision Memorandum from Gary Taverman to Holly Kuga, dated February 16, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: February 24, 2000.

Holly Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 00–5074 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor at (202) 482–5831 or Ron Trentham at (202) 482–6320, 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 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 these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On August 30, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on Silicon Metal from Brazil, covering the period July 1, 1998 through June 30, 1999 (64 FR 47167). The preliminary results are currently due no later than April 1, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 30, 2000. *See* Decision Memorandum from Thomas Futtner to Holly A. Kuga, dated February 25, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. 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: February 25, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 00–5075 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022500D]

North Carolina and Louisiana Commercial King and/or Spanish Mackerel Fishermen Pilot Economic Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 May 1, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 507, 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 John Vondruska, Department of Commerce, NCAA, National Marine Fisheries Service, Fisheries Economics Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

SUPPLEMENTARY INFORMATION:

I. Abstract

The North Carolina and Louisiana Commercial King and/or Spanish Mackerel Fishermen Pilot Economic Survey will consist of telephone screening with in-person interviews of commercial fishermen in North Carolina and Louisiana possessing Federal commercial mackerel fishing permits. The survey will provide NMFS with economic information to better estimate the effects of regulations proposed for the King and Spanish mackerel commercial fisheries. The survey will also provide a better basis for designing statistically-random surveys for other strata of the population of boats that engage in these and other fisheries in a seasonally-complex round of economic activity throughout the Southeast (coastal states from North Carolina to Texas). Monitoring of these fisheries is required under the Magnuson-Stevens Fishery Conservation and Management Act.

II. Method of Collection

The information sought will be collected through telephone screener interviews and in-person data collection. The frame of vessels in North Carolina and Louisiana holding Federal commercial mackerel fishing permits will be randomly sampled (separately by state).

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (commercial mackerel fishermen in North Carolina and Louisiana).

Estimated Number of Respondents: 103.

Estimated Time Per Response: Average response times are estimated at 12 minutes per telephone screening interview, 15 minutes per captain interview, 20 minutes per owner interview, and 45 minutes (15 minutes x 3 times) per typical trip interview for a total time of 92 minutes per respondent.

Estimated Total Annual Burden Hours: 160 hours.

Estimated Total Annual Cost to Public: $0 (no 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 also will become a matter of public record.

Dated: February 24, 2000

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5064 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022500E]

Alaska Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 May 1, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via 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 Patsy A. Bearden, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, 907–586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishermen wanting to fish in regulated fisheries in the Exclusive Economic Zone off Alaska must apply for a Federal Fisheries Permit, a Federal Processor Permit, a High Seas Power Troller Permit, or an Experimental Fishing Permit. The issuance of a permit is an essential ingredient in the management of fishery resources. Identification of the participants, harvest gear types, descriptions of vessels or shoreside facilities, and expected activity levels is needed to measure the consequences of management controls, and is an effective tool in the enforcement of other fishery regulations. Experience has shown that fines for violations of specific fishery regulations are not as effective as the threat of a permit revocation that would exclude the vessel from the fishery altogether. Experimental fishing provides information not otherwise available through research or commercial fishing operations.

II. Method of Collection

Each of the four permits is mandatory for certain fishery participants. A permit is obtained through completion of an application form.

III. Data

OMB Number: 0648–0206.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 2,814.

Estimated Time Per Response: 20 minutes for a Federal Fisheries Permit or Federal Processor Permit application, 30 minutes for applications for a Scallop Moratorium Permit Transfer or High Seas Power Troller Permit in the Salmon Fishery, and 30 hours for an Experimental Fishing Permit application.

Estimated Total Annual Burden Hours: 358.

Estimated Total Annual Cost to Public: $1,413.

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 also will become a matter of public record.

Dated: February 24, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5065 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.022800A]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council Scientific and Statistical Committees (SSC) will hold a joint public meeting.

DATES: The meeting will be held on Monday, March 13, 2000, from 10:00 a.m.- 5:00 p.m.

ADDRESSES: This meeting will be held at the Sheraton International Hotel at Baltimore International Airport, 7032 Elm Road, Baltimore, MD; telephone 410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic and New England Fishery Management Councils recently initiated management of spiny dogfish *(Squalus acanthias)* pursuant to the Magnuson-Stevens Fishery Conservation and Management Act of 1976 as amended by the Sustainable Fisheries Act through the development of the Spiny Dogfish Fishery Management Plan (FMP). The New England and Mid-Atlantic Fishery Management Councils adopted recommendations relative to second year management measures for spiny dogfish at their respective meetings in November and December 1999. The Councils failed to reach agreement relative to the preferred measures for spiny dogfish in 2000–2001. As such, the respective measures recommended by each Council were presented to the Regional Administrator. The FMP specifies that the Regional

Administrator shall review the recommendations and, if necessary, may modify the annual quota and other management measures to assure that the target F specified in the FMP will not be exceeded. The Regional Administrator may modify the recommendations using any of the measures that were not rejected by both Councils.

The purpose of the joint SSC meeting is to provide scientific peer review of analyses relating to alternative management measures for spiny dogfish not considered by the Councils during the quota setting process for the fishing year 2000–2001. The measures may include quotas, seasons, trip limits or any other measure or set of measures specified in the FMP. In addition, alternative stock rebuilding targets and schedules, as well as analyses of discard mortality, may be presented and reviewed.

Although non-emergency issues not contained in this agenda may come before the Committees for discussion, these issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 28, 2000.

Richard W. Surdi,

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

[FR Doc. 00–5068 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021800A]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research and enhancement permits (1238, 1239).

SUMMARY: Notice is hereby given that NMFS has received permit applications from Mr. Ken Bergstrom, of the Western Massachusetts Center for Sustainable Aquaculture (WMCSF)(1238) and Dr. Boyd Kynard, of USGS-BRD-Conte Anadromous Fish Research Center (CAFRC) (1239).

DATES: Comments or requests for a public hearing on either of these applications must be received at the appropriate address or fax number (*see* **ADDRESSES**) no later than 5:00 pm eastern standard time on April 3, 2000.

ADDRESSES: Written comments on either of these applications should be sent to Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301–713–1401).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (*see* **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species is covered in this notice: Endangered shortnose sturgeon (*Acipenser brevirostrum*).

New Applications Received

WMCSF has requested a 5-year enhancement permit to maintain up to 300 captively bred juvenile shortnose sturgeon currently held by the US Fish and Wildlife Service—Conte Anadromous Fish Research Center. The fish will be used as part of an education program emphasizing conservation of Connecticut River fishes.

CAFRC has requested a 5-year permit to lethally take up to 200 spawned eggs, embryos and larvae annually; capture, PIT tag and release up to 350 juvenile and adult sturgeon annually; and authorization to lethally take up to 1000 pre-spawned eggs; radio tag and release 3 pre-spawned females and 7 pre-spawned males for three years of the permit. The applicant is proposing to continue research on life history of shortnose sturgeon in the Connecticut river, and plans to collect new information on spawning, migration, habitat and fish passage of the species.

Dated: February 24, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–5067 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022300B]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research permits (1240, 1241, 1242, 1243, 1244); receipt of an application to modify a permit (1136); issuance of a permit (1215); and issuance of amendments and modifications to existing permits (1119, 1130, 1140).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received permit applications from the U.S. Geological Survey at Cook, WA (USGS) (1240, 1241) and the Fish Ecology Division, Northwest Fisheries Science Center, NMFS at Seattle, WA (FED–NWFSC) (1242, 1243, 1244); NMFS has received an application for modifications to a permit from the Oregon Cooperative Fishery and Wildlife Research Unit at Corvallis, OR (OCFWRU) (1136); NMFS has issued a permit to Mr. Charles Cortelyou of Washington Department of Natural Resources at Olympia, WA (WDNR) (1215); NMFS has issued an amendment to a scientific research permit to the U.S. Fish and Wildlife Service (USFWS) (1119); and NMFS has issued modifications to scientific research permits to USGS (1130) and the Environmental Conservation Division, Northwest Fisheries Science Center, NMFS, at Seattle, WA (ECD–NWFSC)(1140).

DATES: Comments or requests for a public hearing on any of the new applications or the modification request must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00pm pacific standard time on April 3, 2000.

ADDRESSES: Written comments on any of the new applications or the modification request should be sent to the Protected Resources Division (PRD), F/NWR3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503–230–5400).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1130, 1140, 1242, 1243, and 1244: Leslie Schaeffer, Portland, OR (ph: 503–230–5433, fax: 503–230–5435, e-mail: Leslie.Schaeffer@noaa.gov).

For permits 1119, 1136, 1215, 1240, and 1241: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: Robert.Koch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Snake River (SnR) fall, threatened SnR spring/summer, endangered upper Columbia River (UCR) spring, threatened lower Columbia River (LCR).

Coho salmon (*O. kisutch*): Threatened southern Oregon/ northern California coast (SONCC).

Sockeye salmon (*O. nerka*): Endangered SnR.

Steelhead (*O. mykiss*): Threatened SnR; endangered UCR; threatened middle Columbia River (MCR); threatened LCR.

To date, final protective regulations for threatened LCR chinook salmon and threatened SnR, MCR, and LCR steelhead under section 4(d) of the ESA have not been promulgated by NMFS. Protective regulations are currently proposed for threatened LCR chinook salmon (65 FR 169, January 3, 2000) and threatened SnR, MCR, and LCR steelhead (64 FR 73479, December 30, 1999). This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues final regulations that prohibit takes of threatened LCR chinook salmon and threatened SnR, MCR, and LCR steelhead. The initiation of a 30-day public comment period on the applications, including their proposed takes of threatened LCR chinook salmon and threatened SnR, MCR, and LCR steelhead does not presuppose the contents of the final regulations.

New Applications Received

USGS (1240) requests a 5-year ESA section 10(a)(1)(A) permit for annual takes of juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, and juvenile SnR steelhead associated with a study designed to provide managers with data on the distribution, abundance, movement, and habitat use of the anadromous fish that migrate through Lower Granite Reservoir on the Snake River in the Pacific Northwest. In particular, the study will provide detailed information on the response of outmigrating smolts to the operation of a surface bypass collector prototype in the forebay of Lower Granite Reservoir. Project objectives and sampling plans will accommodate ESA-listed species recovery needs and constraints. The ESA-listed juvenile fish to be used for the study will be collected at pre-selected trap sites operated by the Idaho Department of Fish and Game and/or Smolt Monitoring Program (SMP) personnel under separate take authorizations and provided to USGS. ESA-listed juvenile fish may also be collected by purse seines in Lower Granite pool or from the juvenile fish bypass facility at Lower Granite Dam. The fish will then be transported as necessary, anesthetized, implanted with radio transmitters, allowed to recover, transported to an upstream release site, released, and tracked electronically. ESA-listed juvenile fish indirect mortalities are also requested.

USGS (1241) requests a 5-year ESA section 10(a)(1)(A) permit for annual takes of juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, juvenile naturally produced and artificially propagated UCR spring chinook salmon, juvenile LCR chinook salmon, juvenile SnR steelhead, juvenile naturally produced and artificially propagated UCR steelhead, juvenile MCR steelhead, and juvenile LCR steelhead associated with a study designed to provide managers with data on the timing, passage, and survival of outmigrating smolts in relation to the operations of John Day, The Dalles, and Bonneville Dams. Project objectives and sampling plans will accommodate ESA-listed species recovery needs and constraints. The target fish for the study consist of juvenile hatchery spring chinook salmon, subyearling fall chinook salmon, and juvenile hatchery steelhead. The fish to be used for the

study will be collected from the juvenile bypass facilities at Bonneville, John Day, and/or McNary Dams on the lower Columbia River by SMP personnel under a separate take authorization and provided to USGS. The fish will then be transported as necessary, anesthetized, implanted with radio transmitters, allowed to recover, transported to an upstream release site, released, and tracked electronically. ESA-listed juvenile fish indirect mortalities associated with the research are also requested. In association with the radio transmitter tagging study, USGS proposes two tasks that will result in lethal takes of ESA-listed juvenile fish. USGS proposes to (1) statistically evaluate the survival rates of juvenile salmonids through John Day, The Dalles, and Bonneville Dams; and (2) evaluate the stress of juvenile salmonids that pass through the new bypass outfall pipe at Bonneville Dam's Second Powerhouse Downstream Migration Facility by measuring physiological indices (blood cortisol and lactate concentrations). For Task 1, fish will be acquired from SMP personnel at the dams, exposed to a lethal dose of anesthetic, and released in paired groups with the live radio-tagged fish to test the potential for dead research fish to be mistaken for live research fish. For Task 2, run-of-the-river fish are proposed to be netted from the sampling flume at Bonneville Dam to acquire the target fish; ESA-listed juvenile fish are proposed to be captured, handled, and released or captured and sacrificed.

FED–NWFSC (1242) requests a 5-year ESA section 10(a)(1)(A) permit to replace scientific research permit 946, which is due to expire on December 31, 2000. The permit is requested for annual takes of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, and juvenile SnR steelhead associated with research designed to evaluate inriver migration versus transportation from Lower Granite Dam on the Snake River to below Bonneville Dam on the Columbia River. Whether the transportation of depressed anadromous fish species should be maximized to enhance recovery is one of the most controversial and critical questions before the fisheries community today. The proposed scientific research is designed to provide definitive information relative to this important question. ESA-listed juvenile fish are proposed to be captured at Lower Granite Dam, handled (checked for condition), and released or captured at Lower Granite Dam, tagged with passive integrated transponders (PIT), and returned to the river below the dam. PIT-tagged fish will then be tracked downriver as juveniles, and later when they return to the Snake River Basin as adults, using automated PIT tag detectors at the hydropower dams on the Columbia and Snake Rivers. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

FED–NWFSC (1243) requests a 5-year ESA section 10(a)(1)(A) permit for annual takes of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, and juvenile SnR steelhead associated with research designed to evaluate juvenile fish survival at the Ice Harbor Dam spillway on the Snake River. Survival estimates for juvenile chinook salmon that migrate through the reservoirs, hydroelectric projects, and free-flowing sections of the Snake and Columbia Rivers are essential for developing effective strategies to recover depressed stocks. Recent survival studies have evaluated passage through various routes at all dams on the lower Snake River except Ice Harbor Dam. ESA-listed juvenile fish are proposed to be collected at Lower Monumental Dam on the Snake River by Smolt Monitoring Program personnel (authorized to collect fish under a separate authorization) and provided to FED–NWFSC. The fish are then proposed to be tagged with radio transmitters and/or PITs, transported to Ice Harbor Dam, held a minimum of 24 hours for recovery, and released into the spillway or transferred to a small barge, transported, and released into the tailrace. Tagged fish will then be tracked downriver as juveniles, and later when they return to the Snake River Basin as adults, using automated PIT tag detectors at the hydropower dams on the Columbia and Snake Rivers. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

FED–NWFSC (1244) requests a 2-year ESA section 10(a)(1)(A) permit to partially replace scientific research permit 1213, which is due to expire on December 31, 2000. The permit is requested for annual takes of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, juvenile naturally produced and artificially propagated UCR spring chinook salmon, juvenile LCR chinook salmon, juvenile SnR steelhead, juvenile naturally produced and artificially propagated UCR steelhead, juvenile MCR steelhead, and juvenile LCR steelhead associated with six studies designed to evaluate the juvenile fish bypass facilities at selected Snake and Columbia River dams. There is general agreement among the scientific community that problems associated with juvenile fish passage through mainstem river hydropower facilities have been a major factor in the decline of ESA-listed anadromous fish species in the Columbia River Basin. Based on the results from bypass studies, guidance devices and bypass system components can be redesigned, modified, or deployed using specific configurations to improve juvenile fish passage. ESA-listed juvenile fish are proposed to be collected at Ice Harbor Dam (Study 1) on the Snake River and McNary Dam (Studies 2 and 3), John Day Dam (Study 4), and Bonneville Dam (Studies 5 and 6) on the Columbia River. Once collected, the fish will be routed to holding tanks, handled (checked for fish condition and fork length), and released or routed to holding tanks, tagged/marked (with PITs, radio transmitters, and/or fin clips), and released. Tagged fish will then be tracked downriver as juveniles, and later when they return to the Columbia/Snake River Basins as adults, using automated PIT tag detectors at the hydropower dams on the Columbia and Snake Rivers. ESA-listed juvenile fish indirect mortalities associated with the research are also requested. In association with the scientific research, lethal takes of ESA-listed juvenile fish are requested for Studies 4 and 5. For Study 4, previously PIT-tagged hatchery yearling chinook salmon with different migration histories are proposed to be collected at John Day Dam, held in an artificial seawater recirculation system for extended periods, and ultimately sacrificed for physiological characteristics and disease profiles. For Study 5, ESA-listed juvenile fish are proposed to be collected in fyke nets at Bonneville Dam and sacrificed as a means to estimate the number of unguided fish during the submersible traveling screens fish guidance efficiency research at the dam.

Modification Requests Received

OCFWRU requests modifications to ESA section 10(a)(1)(A) permit 1136, which currently authorizes annual takes of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, and juvenile naturally produced and artificially propagated UCR steelhead associated

with research designed to compare biological and physiological indices of wild and hatchery juvenile fish exposed to stress from bypass, collection, and transportation activities at the dams on the Snake and Columbia Rivers. The purpose of the research is to determine effects of manmade structures and management activities on outmigrating salmonids and to provide information that can be used to improve their survival. Lethal and non-lethal takes of ESA-listed juvenile fish are authorized by permit 1136. For the modifications, OCFWRU requests annual takes of juvenile MCR steelhead, juvenile LCR steelhead, and juvenile LCR chinook salmon. ESA-listed juvenile fish are proposed to be captured using lift nets or dipnets at McNary Dam and/or John Day Dam on the Columbia River or acquired from SMP or NMFS personnel at Bonneville Dam on the Columbia River, handled, and released while obtaining target fish for the research (primarily hatchery-produced chinook salmon and steelhead). OCFWRU also requests increases in takes of all ESA-listed juvenile fish species currently authorized to be taken by the permit, including both lethal and non-lethal takes. Finally, OCFWRU requests a 2-year extension of the permit. The modifications are requested to be valid for the duration of the permit, which is now proposed to expire on December 31, 2002.

Permits, Amendments, and Modifications Issued

Notice was published on March 2, 1998 (63 FR 10198) that USFWS had applied for a scientific research permit. Permit 1119 was issued on May 15, 1998, and authorized the annual take of adult and juvenile, naturally produced and artificially propagated UCR steelhead associated with studies designed to gather data on emerging juvenile salmon and steelhead and to conduct snorkel surveys in various watersheds as part of inventory and artificial structure monitoring projects. NMFS issued an amendment to permit 1119 on February 22, 2000, that authorizes USFWS annual direct takes of adult and juvenile, naturally produced and artificially propagated UCR spring chinook salmon associated with the studies. An associated indirect mortality of juvenile, naturally produced and artificially propagated UCR spring chinook salmon is also authorized. The amendment to permit 1119 is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on February 2, 1999 (64 FR 5030) that USGS had applied for a modification to scientific research permit 1130. Modification 1 to permit 1130 was issued on February 22, 2000, and authorizes USGS to tag a higher number of fish at John Day Dam and reduce the number tagged at Bonneville Dam due to an increased priority for evaluating fish passage efficiency at John Day Dam. USGS is also authorized annual takes of juvenile, naturally produced and artificially propagated UCR spring chinook salmon. Indirect mortalities of juvenile naturally produced and artificially propagated UCR spring chinook salmon associated with the research are also authorized. Modification 1 to permit 1130 is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on April 26, 1999 (64 FR 20266) that ECD had applied for a modification to scientific research permit 1140. Modification 1 to permit 1140 was issued on February 22, 2000, and authorizes ECD annual take of juvenile naturally produced and artificially propagated UCR spring chinook salmon. Modification 1 to permit 1140 is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on April 26, 1999 (64 FR 20266) that Mr. Charles Cortelyou, of DNR had applied for a scientific research permit that would authorize takes of juvenile UCR spring chinook salmon and juvenile UCR steelhead associated with salmonid presence/absence surveys in proposed timber sale areas in the State of Washington. The stream surveys will determine the correct stream classification and place the stream in the correct Riparian Management Zones (RMZ). The correct RMZ designation will protect listed fish by requiring proper riparian buffers be left along streams. Permit 1215 was issued on February 22, 2000, and expires on December 31, 2003.

Dated: February 25, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–5069 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011300A]

Marine Mammals; Scientific Research Permit No. 962–1530

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Stephen D. Busack, Director Research and Collections, North Carolina State Museum of Natural Sciences, 102 North Salisbury St., Raleigh NC 27603 has been issued a permit to import a marine mammal specimen for scientific purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment. (*see* **SUPPLEMENTARY INFORMATION**)

SUPPLEMENTARY INFORMATION: On November 10, 1999 notice was published in the **Federal Register** (64 FR 61278) that a request for a scientific research permit to import one blue whale skeleton as a scientific specimen had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing and exporting of endangered fish and wildlife (50 CFR 222.23).

Issuance of this permit as required by the ESA is based on a finding that such permit: (1) Was applied for in good faith: (2) Will not operate to the disadvantage of the endangered species which are the subject of this permit: and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Addresses: Documents are available in the following offices: Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2289 (508/281–9250);

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5301);

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg., 1, Seattle, WA 98115–0070 (206/526–6150); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Dated: February 25, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–5066 Filed 3–1–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market for Futures and Options on the FORTUNE e–50 Index™

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market for futures and options on the FORTUNE e–50 Index™. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before April 3, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary @cftc.gov*. Reference should be made to the Chicago Mercantile Exchange (CME) for futures and options on the FORTUNE e–50 Index™.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washingotn, DC (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitted written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 25, 2000.

Richard A. Shilts,

Acting Director.

[FR Doc. 00–4967 Filed 3–1–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent (NOI) To Prepare an Environmental Impact Statement for the Future Development and Operations at Fort Meade, MD

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Fort George G. Meade, Maryland, announces its intent to prepare an Environmental Impact Statement (EIS) that will address the future development and operations of Fort Meade's Real Property Master Plan (RPMP) for the Years 2000–2004. The planned projects which will occur during this time include the following: construction of new facilities that will consolidate tenants from dilapidated World War II structures and off post leased facilities into more cost efficient and effective facilities, demolition and construction of barracks and mess halls and providing on post development opportunities for tenants on installations that are currently faced with Base Realignment and Closure. It is the purpose of this EIS to further assess the impacts, most specifically to air and traffic, that were identified in the Environmental Assessment entitled ''Future Development and Operations Environmental Assessment'' dated April 1999.

ADDRESSES: Questions or written comments may be forwarded to the U.S. Army Corps of Engineers, Baltimore District, Planning Division, Planning and Environmental Services Branch (Attn: Ft. Meade EIS), 10 South Howard Street, P.O. Box 1715, Baltimore, Maryland 21203–1715, Telephone (410) 962–4939.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Gebhardt, Environmental Engineer, Directorate of Public Works Environmental Management Office, at (301) 677–9365.

SUPPLEMENTARY INFORMATION: The Fort Meade RPMP has the potential to significantly impact certain natural, economic, social and cultural resources of the Fort Meade community. The objective is to prepare a comprehensive EIS which will serve as a planning tool, a public information source and a reference for mitigation tracking.

Alternatives may consist of alternate locations for specific projects, partial implementation of the specific project or modifications to the specific project. The alternatives will be developed during the preparation of the Draft EIS (DEIS) as a result of public input and the environmental analysis of the proposals within the plan. The objective Fort Meade's DEIS is to identify and evaluate any environmental implications that may result from developing the Master Plan. The DEIS will describe the impacts of existing environmental, cultural and natural resources, social, economic and environmental justice conditions associated with the proposed projects at Fort Meade.

The Army will initiate a scoping process to discuss significant issues related to the DEIS through public meetings and local publications. These efforts are designed to encourage public

input that will inevitably help determine and better define the underlying issues of the DEIS. Planned public meetings will be announced through local publications and online Internet access in advance of any proposed action, announcing meeting time and location.

A public meeting will be held on Fort Meade to facilitate input to the EIS process by citizens and organizations. The date and time of these meetings will be announced in the general media and will be at times and locations convenient to the public. To be considered in the Draft EIS, comments and suggestions should be received not later than 15 days following the public scoping meeting.

Significant issues: Within Fort Meade's boundaries lie numerous historic and prehistoric sites that were identified through the Cultural Resources Management Plan. Fort Meade also maintains historically significant structures which are eligible for inclusion on the National Register and may be directly affected by the actions proposed in the long range Master Plan. Equally important is the impact Fort Meade has on the Chesapeake Bay and the crucial role it plays in maintaining and protecting which is considered one of the world's most diverse ecosystems. Fort Meade is also home to eleven State Endangered Species, including the Glassy Darter which is one of only two locations in the State of Maryland where the fish is known to exist.

Dated: February 24, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 00–5082 Filed 3–1–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Information Collection Request

AGENCY: National Assessment Governing Board; Department of Education.

ACTION: Notice of amended information collection request.

SUMMARY: The National Assessment Governing Board (NAGB) is amending the Notices of Proposed Information Collection Request (ICR) published on January 18, 2000 and revised on February 18, 2000. The present notice is to inform the public that the Governing Board has cancelled one of two proposed research studies. The study that was cancelled is on the feasibility of establishing a calibration linkage between a test form resembling an individual test and a survey of group results—the National Assessment of Educational Progress. The study is described in the January 18 and February 18, 2000 notices.

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, N.W., Room 10235; New Executive Office Building; Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Submit written comments, on or before March 17, 2000, identified by ''ICR: VNT Research and Validation Support Studies (Option Year 2).'' The National Assessment Governing Board will forward to OMB any comments received from the public in response to the January 18, 2000 notice inviting requests for public comment on this ICR.

SUPPLEMENTARY INFORMATION: Section 3506 of the Act (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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. In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice amends a proposed information collection request (ICR) of the National Assessment Governing Board (the Governing Board, or NAGB) published on January 18, 2000 and revised on February 18, 2000. The information collection is to conduct a research and validation support study related to test development for the proposed Voluntary National Test (VNT) during Spring 2000.

ADDITIONAL INFORMATION: Copies of this ICR may be obtained from Ray Fields, Assistant Director, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002. Telephone: (202) 357–0395; e-mail: Ray__Fields@ED.Gov.

Dated: February 28, 2000.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 00–5072 Filed 3–1–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Quarterly Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming quarterly meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES: March 16, 2000.

TIME: 9 a.m. to 5 p.m.

LOCATION: Room 100, 80 F St., NW., Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov, or nerpph@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The meeting is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Thelma Leenhouts at (202) 219–2065 by no later than March 9. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

The Board will hear reports from the Assistant Secretary for OERI and from the chair and executive director. The Board will review its recommendations for the reauthorization of OERI and consider proposals for a major study of the infrastructure of educational research and development.

A final agenda will be available from the Board office on March 9, and will be posted on the Board's web site, *http://www.ed.gov/offices/OERI/NERPPB/.*

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: February 28, 2000.

Eve M. Bither,

Executive Director.

[FR Doc. 00–5013 Filed 3–1–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Federal Student Aid Application File (18–11–01)

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: The Chief Information Officer for the Department of Education publishes this correction to the Federal Student Aid Application File (18–11–01). This system was republished on June 4, 1999 (64 FR 30159) in response to the President's direction that agencies review system notices to be sure that each notice was current and accurately reflected how the system was used by the agency. In the process of converting this system of records to a newer, easier to read style, some of the routine uses that the Department decided to apply to all systems of records were dropped. This notice adds the intended routine uses to the system of records.

DATES: The routine uses added by this notice are effective on March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Bill Burrow, Office of Chief Information Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5624 Regional Office Building 3, Washington, DC 20202–4580. Telephone: 202–401–0250. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

General

In a memorandum dated May 14, 1998, President Clinton directed executive departments and agencies (agencies) to conduct a thorough review for accuracy and completeness of all agency systems of records. He directed agencies to make sure that the routine uses continue to be necessary and compatible with the purposes for which they were collected.

On June 4, 1999, 64 FR 30105, the Department republished virtually all of its systems of records, including this system of records, in response to the President's memorandum. In that notice, the Department committed to using standard routine uses for all its revised systems. Unfortunately, the standard routine use for research was omitted from the Federal Student Aid Application File (18–11–01), due to technical errors. This notice adds this and other standard routine uses to that system of records. ED needs the research routine use in this system of records so that ED may conduct research on the extent to which applicants inaccurately report income needed to determine eligibility for various forms of student financial assistance. These routine uses do not affect the day-to-day operation of this system as its program specific routine uses were not affected by the technical errors.

Correction

In the Notice of New, Amended, Altered and Deleted Systems of Records published in the **Federal Register** on June 4, 1999 (64 FR 30105), make the following correction beginning on page 30160, in the first column, in the notice entitled ''Federal Student Aid Application File (18–11–01),'' under the heading ''Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Users,'' add the following numbered paragraphs after paragraph (9):

(10) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.*The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(11) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(12) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(13) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(14) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(15) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Dated: February 25, 2000.

Craig B. Luigart,

Chief Information Officer.

[FR Doc. 00–5120 Filed 2–29–00; 9:56 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4718–011

Cocheco Falls Associates; Notice of Meeting

February 25, 2000.

Staff from the Federal Energy Regulatory Commission (Commission) will hold a meeting on March 9, 2000, to entertain resolution of issues discussed in the Commission staffs Draft Environmental Assessment (DEA) for the Cocheco Falls Project (FERC No. 4718), issued on December 16, 1999. The project is located on the Cocheco River in Dover, New Hampshire.

The meeting will be held at 1:00 p.m. at the New Hampshire Fish and Game Department, Region 3, 225 Main Street, Durham, NH 03824. Any questions concerning the meeting should be directed to Robert Grieve at (202) 219–2655 or by electronic mail at *robert.grieve@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 00–4992 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–036]

Columbia Gas Transmission Corporation; Notice of Refund Report

February 28, 2000.

Take notice that on February 22, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing a refund report in the above referenced docket, pursuant to Section 154.501(e) of the Commission's regulations.

Columbia states that it made a filing on December 15, 1999, pursuant to a settlement approved by the Commission in Docket No. RP95–408–013 (79 FERC 61,044), to share gains from the sale of certain gathering and products extraction facilities. The Commission approved the filing by letter order dated February 11, 2000 in Docket No. RP95–408–032, authorizing Columbia to make the refund and directing Columbia to calculate additional interest to the date of the refund. Columbia states that the instant filing shows that Columbia made the refund, including interest through the date of the refund, which was January 20, 2000.

Columbia states that copies of its filing have been mailed to all affected customers and 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 March 3, 2000. 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. 00–5023 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–363–002

Equitrans, L.P.; Notice of Request for Limited Waiver

February 25, 2000.

Take notice that on February 3, 2000, Equitrans, L.P. (Equitrans) tendered for filing a request for a one-year waiver, until March 1, 2001, to comply with the following GISB Standards (Version 1.3): Nomination Standards 1.4.1 through 1.4.7, Flowing Gas Standards 2.4.1 through 2.4.6, Invoicing Standards 3.4.1 through 3.4.4, EDM Standards 4.3.1 through 4.3.3, and to the extent applicable to EDI transactions, 4.3.9 through 4.3.15, Capacity Release Standards 5,4,1 through 5.4.17.

Equitrans states upon granting of the request, it will submit revised General Terms and Conditions to remove any reference to information being submitted or obtained via EDI transmission.

Equitrans states that in June 1999 it contracted with Altra Energy Technologies, Inc. (Altra) to install and help implement a new gas transportation management system. Unforseen problems in the implementation of the new system and problems with the maintenance of the current system necessitates this filing. The new Altra system is expected to be operational by December 31, 2000.

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 March 3, 2000. 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 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4994 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–100–000, *et al.*]

Central Generadora Electrica San Jose, Limitada, *et al.*; Electric Rate and Corporate Regulation Filings

February 23, 2000.

Take notice that the following filings have been made with the Commission:

1. Central Generadora Electrica San Jose, Limitada

[Docket No. EG00–100–000]

Take notice that on February 18, 2000 Central Generadora Electrica San Jose, Limitada (Central) with its principal office c/o TECO Power Services Corporation, 702 North Franklin Street, Tampa, Florida 33602, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Central states that it is a Sociedad de Responsibilidad Limitada organized under the laws of Guatemala. Central will be engaged directly and exclusively in the business of owning and operating an approximately 120 MW electric generating facility located in the area of Masagua, Department of Escuintla, Guatemala. Electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

Comment date: March 15, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. ISO New England Inc.

[Docket No. ER98–3554–004]

Take notice that on February 17, 2000, ISO New England Inc. (the ISO) filed a Compliance Report detailing refunds made pursuant to the settlement of the ISO's Tariff for Transmission Dispatch and Power Administration Services, a request for privileged treatment of the information contained in the Compliance Report and request for partial waiver of the Commission order regarding the Compliance Report.

Copies of said filing have been served upon all parties to this proceeding, all Participants in the New England Power Pool (NEPOOL) and all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as, on the governors and utility regulatory agencies of the six New England States.

Comment date: March 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. The Alliance Companies:

[Docket Nos. ER99–3144–002 and EC99–80–002 (not consolidated)]

American Electric Power Service Corporation on behalf of Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company; Consumers Energy Company; The Detroit Edison Company;

FirstEnergy Corp. on behalf of The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company; Virginia Electric and Power Company

Take notice that on February 18, 2000, the Alliance Companies (American Electric Power Service Corporation, Consumers Energy Company, The Detroit Edison Company, FirstEnergy Corp. and Virginia Electric and Power Company) on behalf of themselves and their public utility operating company subsidiaries submitted a transmittal letter and attached documents in compliance with the December 20, 1999 Order On Proposed Disposition and Related Rate Filings (Order) in the above-referenced proceedings. The filing provides explanation for certain aspects of the Applicants' proposal as required by the Order, modifications to the proposed ISO Bylaws, modifications to the Transco Term Sheet and modifications to the Operating Protocol.

The Alliance Companies state that copies of this filing have been served on each person designated on the official service list.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Energy Company

[Docket No. ER00–1651–000]

Take notice that on February 18, 2000, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Firm Point-to-Point Transmission Service with Northern Indiana Public Service Company.

The agreement was pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) and has an effective date of February 2, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and Northern Indiana Public Service Company.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company

[Docket No. ER00–1652–000]

Take notice that on February 18, 2000, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), and West Texas Utilities Company (WTU) (collectively, the CSW Operating Companies) tendered for filing transmission and ancillary services agreements under the CSW Operating Companies' Open Access Transmission Tariff with FPL Energy Power Marketing, Inc. (FPL Energy).

The CSW Operating Companies seek an effective date of January 21, 2000 for the agreements.

Copies of the filing were served on FPL Energy and the Public Utility Commission of Texas.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Illinova Power Marketing, Inc.

[Docket No. ER00–1653–000]

Take notice that on February 18, 2000, Illinova Power Marketing, Inc. (IPMI), tendered for filing Electric Power Transaction Service Agreements under which certain customers will take service pursuant to IPMI's power sales tariff, Rate Schedule FERC No. 1.

Copies of this filing have been served upon each purchaser.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Coral Power, L.L.C.

[Docket No. ER00–1654–000]

On February 18, 2000, Coral Power, L.L.C. (Coral), a limited liability company formed under the laws of Delaware, tendered for filing a petition for acceptance of revisions to its market-based rate schedule to provide for the sale of ancillary services and firm transmission rights.

Coral also requested waiver of the 60-day notice requirement.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER00–1655–000]

Take notice that on February 18, 2000, Southern Company Services, Inc. (SCSI), acting as agent for Alabama

Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Operating Companies), tendered for filing the amended and restated Southern Company System Intercompany Interchange Contract (IIC) dated February 17, 2000. The amended and restated IIC incorporates previously approved amendments, simplifies and streamlines the contract, recognizes an internal organizational change, and adopts several revisions that are intended to promote equitable treatment among the participants. In addition, SCSI submitted revisions to the Operating Companies' Market Based Rate Power Sales Tariff to reflect this same organizational change and to update references to the interest calculation and to the Open Access Transmission Tariff.

SCSI requests an effective date of April 18, 2000 for this submittal.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Deseret Generation & Transmission Co-operative

[Docket No. ER00–1660–000]

Take notice that Deseret Generation & Transmission Co-operative on February 18, 2000, tendered for filing a Wholesale Power Agreement For Large Industrial Loads [Implementing Deseret Rate Schedule ML-''PC1''] between Deseret Generation & Transmission Co-operative and Moon Lake Electric Association, Inc. The Agreement supercedes Supplement No. 8 to Service Agreement No. 5 under FERC Electric Tariff, Original Volume No. 1, and Supplements No. 1 and 2 thereto. The proposed change would result in a rate decrease in accordance with the provisions of the current rate schedules contained in Supplement No. 8 to Service Agreement No. 5 under FERC Electric Tariff, Original Volume 1, and Supplements No. 1 and 2 thereto.

The proposed change is being made by agreement of the parties and pursuant to the provisions of Service Agreement No. 5 under FERC Electric Tariff, Original Volume No. 1 which is already on file with the Commission.

Copies of this filing have been served upon Deseret's member cooperatives.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–4990 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–25–006, *et al.*]

Northern States Power Company, *et al.*; Electric Rate and Corporate Regulation Filings

February 24, 2000.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket Nos. OA97–25–006, OA97–606–006, ER98–1890–007, ER98–2060–007 and EL98–40–006]

Take notice that on February 22, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (NSP) submitted the refund report required by the Commission's December 20, 1999 letter order approving the Offer of Settlement filed on March 23, 1999, in the above-captioned dockets. (89 FERC ¶ 61,200 (1999).

NSP states that a copy of the Refund Report has been served on all parties on the official Commission service list for these proceedings, on all affected transmission service customers and on affected state commissions.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Western Area Power Administration

[Docket No. EF00–5071–000]

Take notice that on February 18, 2000, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–87, did confirm and approve on an interim basis, to be effective on April 1, 2000, the Western Area Power Administration's firm power rate formula extension for the Provo River Project.

The extension of the rate formula will be in effect on an interim basis pending the Federal Energy Regulatory Commission's (Commission) approval of it or a substitute rate formula on a final basis. If approved, the final rate formula will be effective until March 31, 2005.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. New Century Services, Inc.

[Docket No. ER00–938–000]

Take notice that on February 22, 2000, New Century Services, Inc. (NCS), on behalf of Public Service Company of Colorado (PSCo), tendered for filing the following amended and restated agreements under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6), namely, four separate transaction agreements for specific sales by PSCo to Municipal Energy Agency of Nebraska (MEAN) of capacity and associated energy for durations of longer than one year.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. PSI Energy, Inc.

[Docket No. ER00–1366–000]

Take notice that on February 18, 2000, PSI Energy, Inc. (PSI), tendered for filing the Transmission and Local Facilities (T&LF) Agreement Calendar Year 1998 Reconciliation between PSI and Wabash Valley Power Association, Inc. (WVPA), and between PSI and Indiana Municipal Power Agency (IMPA). The T&LF Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Electric Company

[Docket No. ER00–1650–000]

Take notice that on February 22, 2000, Pennsylvania Electric Company (Penelec), tendered for filing an

amendment to the Interconnection Agreement, dated as of July 22, 1999, by and between Cleveland Electric Illuminating Company (CEI) and Penelec. The amendment consists of a Reactive Power Compensation Agreement.

Copies of the filing were served upon CEI and regulators in the Commonwealth of Pennsylvania.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. New Century Services, Inc.

[Docket No. ER00–1656–000]

Take notice that on February 18, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and British Columbia Power Exchange Corporation (Powerex).

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ER00–1657–000]

Take notice that on February 22, 2000, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 the executed Firm and Non-Firm Point-to-Point Service Agreements with, Sierra Pacific Energy Company and Amoco Energy Trading Corporation, under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Sierra Pacific Energy Company Amoco Energy Trading Corporation.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER00–1658–000]

Take notice that on February 22, 2000, New England Power Company (NEP), tendered for filing a Firm Local Generation Delivery Service Agreement with D. Hobbs Contracting, Inc.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER00–1659–000]

Take notice that on February 22, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted the Fifty-First Agreement Amending the Restated New England Power Pool Agreement (the Fifty-First Agreement).

The Fifty-First Agreement seeks to extend the current congestion cost allocation methodology until the earlier of June 1, 2000, or the beginning of the first calendar month sixty (60) days after the filing of an amendment to the Restated NEPOOL Agreement and/or NEPOOL Tariff.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the NEPOOL Participants.

Comment date: March 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Electric Power Company

[Docket No. ER00–1663–000]

Take notice that on February 18, 2000 Southwestern Electric Power Company (SWEPCO), tendered for filing actuarial reports in support of the amounts to be collected in SWEPCO's 1999 actual and 2000 projected formula rates for post-employment benefits other than pensions as directed by the Statement of Financial Accounting Standard No. 106 (SFAS 106), issued by the Financial Accounting Standards Board, and the collection in such formula rates of other post-employment benefits as directed by SFAS 112.

SWEPCO has served copies of the transmittal letter on all of its formula rate customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas. SWEPCO will provide copies of the actuarial reports to any customer or state commission upon request.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool, Inc.

[Docket No. ER00–1672–000]

Take notice that on February 18, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing a correction to a service agreement previously filed with the Commission in Docket No. ER00–834. SPP seeks an effective date of January 1, 2000, for the corrected agreements.

Comment date: March 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5022 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2609–013–NY]

Curtis/Palmer Hydroelectric Company LP, International Paper Company; Notice of Availability of Final Environmental Assessment

February 25, 2000.

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 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Curtis/Palmer Falls Hydroelectric Project, located in Warren and Saratoga Counties, New York, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The FEA 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. 00–4991 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Environmental Assessment Accepted for Filing; Requesting Interventions and Protests; Establishing Procedural Schedule and Final Amendment Deadline; Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions; Requesting Reply Comments

February 25, 2000.

Take notice that the following license application has been filed with the Commission. An Applicant-Prepared Environmental Assessment (APEA) for the Upper and Middle Dams Storage Project, which includes the project below, has been filed with the Commission. Both documents are available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 11834–000 [1]

c. *Dated filed:* December 23, 1999.

d. *Applicant:* FPL Energy Maine Hydro LLC.

e. *Name of Project:* Upper and Middle Dams Storage Project.

f. *Location:* The project is located on the Rapid River at the headwaters of the Androscoggin River in Oxford and Franklin Counties, Maine. The project would not utilize any Federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Frank Dunlap, Senior Environmental Coordinator, FPL Energy Maine Hydro LLC, 100 Middle Street, Portland, ME 04101 (207) 771-3534.

i. *FERC Contact:* Any questions on this notice should be addressed to Mark Pawlowski, E-mail address mark.pawlowski@ferc.fed.us, or telephone (202) 219–2795.

j. *Deadline for filing motions to intervene, protests, comments, final terms and conditions, recommendations, and prescriptions: 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 St. 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, the intervenor must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* On September 25, 1995, the Director, Office of Hydropower Licensing, approved FPL Energy Maine Hydro LLC's (FPLE Maine) use of the Alternative Licensing Process. Scoping, pursuant to the National Environmental Policy Act of 1969, as amended, for the project was conducted through scoping documents issued in November 1995 and February 1999, and in public scoping meetings on December 13, 1995. On August 28, 1998, the Upper Androscoggin River Storage Settlement Agreement was signed by the parties. The draft license application and APEA were distributed by the applicant for comment on September 1, 1999.

The Commission staff has reviewed the license application and APEA and has determined that the application is acceptable for processing and no additional information or studies are needed to prepare the Commission's environmental assessment. Comments, as indicated above, are being requested from interested parties. The applicant will have 45 days following the end of this period to respond to those comments, or may elect to seek a waiver of this deadline.

1. *Description of Project:* The proposed project consists of two dams (Upper Dam and Middle Dam): (1) the Upper Dam consists of: (a) 200-foot-long and 25-foot-high concrete crib; (b) a 15,740-acre impoundment (Mooselookmeguntic Lake) at full pond elevation 1,468 feet U.S. Geological Survey (USGS) Datum; (c) a gatehouse containing 17 gates, ranging from 10 feet high and 6 feet wide, and 10.5 feet high and 15 feet wide; (d) two earthen dikes that extend 300 feet to the north and 1,000 feet at the south of the gatehouse; and (e) appurtenant facilities. (2) the Middle Dam consists of: (a) 244-foot-long and 22-foot-high concret crib; (b) a 7,470-acre impoundment (Richardson Lake) at full pond elevation 1,450 feet USGS Datum; (c) a 560-foot-long earth embankment situation to the north and a 200-foot-long embankment situated to the south of the gatehouse structure; (d) a gatehouse structure containing 20 gates, ranging from 10 feet high and 7 feet wide, and 12 feet high and 15 feet wide; and (e) appurtenant facilities. Two-thousand feet to the southeast of Middle Dam is Black Cat Dike, which is a 180-foot-long earthen embankment.

The Upper and Middle Dams Storage Project is a water storage facility with no generating facilities.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at 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.

n. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application and APEA.

o. Filing and Service of Responsive Documents—The Commission is requesting comments, recommendations, terms and conditions, prescriptions, and reply comments.

The Commission directs, pursuant to 18 CFR 4.34(b) of the regulations, that all comments, recommendations, terms and conditions, and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

p. All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,''

[1] On August 1, 1994, the Upper and Middle Dams Storage Project (UL94–1) was the subject of a jurisdictional order issued by the Commission, which required the project owner to prepare and submit an Application for Initial License to the Commission. The Commission has designated the Upper and Middle Dams Storage Project as P–11834–000.

''COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' ''PRESCRIPTIONS,'' or ''REPLY COMMENTS,'' (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application and APEA directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to: Director, Division of Environmental Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–4993 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 25, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2001(e)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP98–150–000 and CP98–151–000, 2–9–00, Jennifer Kerrigan, FERC
2. CP98–150–000 and CP98–151–000, 2–10–00, Jennifer Kerrigan, FERC
3. CP98–150–000 and CP998–151–000, 2–3–00, Gordon P. Buckley
4. CP00–6–000, 2–15–00, Marian Ryan
5. CP00–6–000, 2–15–00, James Martin, FERC
6. CP98–150–000 and CP98–151–000, 2–15–00, Jennifer Kerrigan, FERC
7. CP00–14–000, 2–15–00, Kim Jessen
8. Project No. 459–105, 2–18–00, Congressman Ike Skelton
9. CP98–150–000 and CP98–151–000, 2–16–00, Matthew J. Brower
10. CP99–94–000, 2–7–00, George Craciun

Prohibited

1. ER00–996–000 and ER00–971–000, 2–3–00, ISO New England Inc.
2. EL99–57–000, 2–7–00, Jacquelyn M. Frick
3. CP99–94–000, 2–16–00, David Parham

David P. Boergers,

Secretary.

[FR Doc. 00–5024 Filed 3–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Provo River Project—Rate Order No. WAPA–87

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–87 placing a rate formula extension into effect on an interim basis beginning on April 1, 2000, for power marketed by the Western Area Power Administration (Western) from the Provo River Project (PRP). The rate formula will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places it into effect on a final basis or until it is replaced by another rate formula.

DATES: The provisional rate formula extension will be placed into effect on an interim basis on April 1, 2000, and will be in effect until the FERC approves the rate formula extension or a substitute rate formula and places the formula in effect on a final basis for a 5-year period ending March 31, 2005, or until superseded.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Loftin, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1534, telephone (801) 524–6380, email loftinc@wapa.gov.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC.

Delegation Order No. 0204–172, effective November 24, 1999, reinstates the authority delegated to the Deputy Secretary in Amendment No. 3 to Delegation Order No. 0204–108, which authority was rescinded in the Secretary's Order of April 15, 1999. Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR part 903, effective on September 18, 1985 (50 FR 37835).

DOE procedures have been followed by Western in developing this provisional firm power rate formula.

The Provo River Project was authorized in 1935. Construction on the PRP, which includes Deer Creek Dam and Powerplant on the Provo River in Utah, began in 1938, but was not completed until 1951. The powerplant, authorized on August 20, 1951, was completed and generation began in 1958. Its maximum operating capacity is 5,300 kilowatts (kW).

Provo River Project power is now marketed independently from the Salt Lake City Area/Integrated Projects pursuant to a marketing plan that was approved and published in the **Federal Register** on November 21, 1994. This marketing plan allows Western to market the output of the PRP to Utah Municipal Power Agency and Utah Associated Municipal Power Systems (Customers), located in the Provo River drainage area.

Contract Nos. 94–SLC–0253 and 94–SLC–0254 (Contracts) require that the amount of each annual installment be established in advance by Western and submitted to the Customers on or before August 31 of the year preceding the appropriate fiscal year (FY). Each FY Western estimates Deer Creek Powerplant (DCP) expenses by preparing a power repayment study that includes estimates of operation, maintenance, and replacement (OM&R) costs for the DCP.

Each annual installment pays the annual amortized portion of the United States investment in the Deer Creek Dam and Reservoir hydroelectric facilities with interest, and the associated OM&R costs. This repayment schedule does not depend upon the power and energy made available for sale or the rate of generation each year, but is a contract in which the Customers pay all OM&R expenses of the PRP and, in return, receive all of the energy produced by the PRP. Western will continue to provide the Customers a revised annual installment by August 31 of each year using the same methodology.

Rate Order No. WAPA–87, confirming, approving, and placing the proposed Provo River firm power rate formula extension into effect on an interim basis, is issued, and the extension will be promptly submitted to FERC for confirmation and approval on a final basis.

Dated: February 14, 2000

T. J. Glauthier,

Deputy Secretary.

Order Confirming, Approving, and Placing a Rate Formula Extension for the Provo River Project Into Effect on an Interim Basis (April 1, 2000)

This rate formula extension is established pursuant to the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101–7352, through which the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the PRP, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

By subsequent Order, effective April 15, 1999, the Secretary rescinded all delegation of authority to the Deputy Secretary, whether contained in Delegation Orders, Departmental Directives, or elsewhere, concerning the Department's Power Marketing Administrations, including, but not limited to, authority delegated or affirmed in Delegation Order No. 0204–108, as amended.

Delegation Order No. 0204–172, effective November 24, 1999, reinstates the authority delegated to the Deputy Secretary in Amendment No. 3 to Delegation Order No. 0204–108, which authority was rescinded in the Secretary's Order of April 15, 1999. Existing Department of Energy procedures for public participation in power rate adjustments are located at 10 CFR part 903, effective on September 18, 1985 (50 FR 37835). Filing requirements and procedures for approving Power Marketing Administration rates by FERC are found at 18 CFR part 300.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

CRSP: Colorado River Storage Project.

Contracts: Contract No. 94–SLC–0254 with Utah Municipal Power Agency effective December 22, 1994, and Contract No. 94–SLC–0253 with Utah Associated Municipal Power Systems effective January 19, 1995.

Customers: Utah Associated Municipal Power Systems and Utah Municipal Power Agency.

DCP: Deer Creek Powerplant.

DOE: Department of Energy.

DOE Order RA 6120.2: A Department of Energy order dealing with power marketing administration financial reporting.

FERC: Federal Energy Regulatory Commission.

FY: Fiscal year, October 1 to September 30.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

NEPA: National Environmental Policy Act of 1969.

OM&R: Operation, maintenance, and replacement.

PRP: Provo River Project.

PRS: Power Repayment Study.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

SLCA/IP: Salt Lake City Area/ Integrated Projects.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

This extension will become effective on an interim basis beginning April 1, 2000, and will be in effect pending FERC's approval of this or a substitute rate formula on a final basis for a 5-year period ending March 31, 2005, or until superseded.

Public Notice and Comment

On February 4, 1999, and again on March 26, 1999, Western met with the Customers and notified them of Western's intent to extend the present rate formula. This request is for approval of an extension of the present methodology used for calculating the annual installment. Western also discussed the FY 2000 budget and capital expenditures. Western has met with the Customers, and the Customers want to continue the present rate formula.

Project History

Construction of the PRP began in May 1938. The powerplant was completed in 1958 and has a generating capacity of

5,300 kW. Only energy excess to PRP purposes has been available for Federal marketing. Between 1963 and 1994, SLCA/IP needed additional energy and purchased the available PRP energy at an amount established annually to enable the PRP to cover its costs, including OM&R costs and repayment expenses. These expenses included $1.6 million of irrigation assistance to the water users. PRP's original power investment has been repaid, therefore the customers are responsible for only the replacement investments of the project.

PRP power is now marketed independently from the SLCA/IP pursuant to a marketing plan approved and published in the **Federal Register** on November 21, 1994. This marketing plan allows Western to market the output of the PRP to Utah Municipal Power Agency and Utah Associated Municipal Power Systems, located in the Provo River drainage area.

Power Repayment Studies

The Contracts require that the amount of each annual installment be established in advance by Western and submitted to the Customers on or before August 31 of the year preceding the appropriate FY. Each FY, Western estimates DCP expenses by preparing a PRS that includes estimates of OM&R costs for the DCP for the next FY.

Each annual installment pays the annual amortized portion of the United States investment in the Deer Creek Dam and Reservoir hydroelectric facilities with interest and the associated OM&R costs. This repayment schedule does not depend upon the power and energy made available for sale or the rate of generation each year.

A PRS is prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to be repaid by the PRP power function. Repayment criteria are based on law, policies, and authorizing legislation, in particular DOE Order RA 6120.2.

Certification of Rate

Western's Administrator has certified that the PRP firm power rate formula placed into effect on an interim basis herein is consistent with applicable laws and that the rate is the lowest consistent with sound business principles.

Discussion

According to Reclamation law, Western must establish power rates sufficient to recover operation, maintenance, and purchase power expenses, and to repay the Federal Government's investment in generation and transmission facilities. Rates must also be set to cover interest expenses on the unpaid balance of facilities' investments, replacements and additions, and certain non-power costs in excess of the irrigation users' ability to pay.

Western prepares an annual PRS that identifies the anticipated expenses. In accordance with the Contracts, minor replacements and additions are included in the annual expenses. The methodology of annual charges satisfies the cost-recovery criteria set forth in DOE Order RA 6120.2.

Statement of Revenue and Related Expenses

The revenue requirements for the PRP are based upon PRS calculations for future requirements, which will be adjusted when FY actuals are known. The following table provides a summary of revenues and expenses for the current 6-year firm power rate formula and also the actual revenues and expenses.

PROVO RIVER COMPARISON OF 6-YEAR REVENUE AND EXPENSES FY 1995–2000

[$1,000]

Item	Actual [1]	Projected	Difference [2]
Total Revenue	1,743	1,644	99
Expenses:			
O&M	1,233	1,158	75
Transmission	[3] 96	185	(89)
Interest	144	156	(12)
Investment Repayment	[4] 76	145	(69)
Prior Year Adjustments	194	.....	194
Total Expenses	1,743	1,644	99

[1] Amounts for FY 1999 and FY 2000 are estimates taken from the FY 1999 preliminary PRS.
[2] Reflects estimates to actual revenue requirements.
[3] The amount projected is the actual amount of transmission costs owed to CRSP. An adjustment to the financial statements will be made in the future to reflect these costs.
[4] The projected replacements were overstated.

The following table provides a summary of revenue and expense data through the 5-year proposed rate methodology approval period.

PROVO RIVER PROJECT 5-YEAR PROJECTIONS REVENUES AND EXPENSES

[$1,000]

	FY 2001—2005 Projections
Total Revenues	1,463
Costs:	
O&M [1]	1,151
Transmission	149
Interest	124
Investment Repayment	39
Total Costs	1,463

[1] Includes $78,000 in FY 2001 to overhaul generators.

Basis for Rate Development

Each Customer is billed for electric service calculated every FY, payable in 12 equal monthly payments. Every FY, Western estimates PRP expenses by preparing a PRS that includes estimates of OM&R costs for the DCP. The amount of each monthly payment is established in advance by Western and submitted to the Customers on or before August 31 of the year preceding the appropriate FY.

The calculation of the amount of the annual installment and the monthly payments includes adjustments to the OM&R charges. These adjustments are

the difference between estimated and actual OM&R expenses. If OM&R charges are underestimated, an amount equal to the difference is added to the next installment. Conversely, if OM&R charges are overestimated, the amount is deducted from the next installment.

In accordance with the Contracts, minor replacements and additions are included in the annual operation and maintenance expenses of the DCP. If major replacements and additions exceeding $5,000, but not greater than $25,000, in costs are needed, the Customers are given the option of financing their individual shares of the cost or of having the cost capitalized and amortized over the life of the replacement or addition or over the life of the contract. If the Customer chooses the latter, the cost is capitalized at the current interest rate prescribed by the DOE, pursuant to RA 6120.2 11B ''Basic Policy for Rate Adjustment; Interest Rate Formula,'' in the FY in which the replacement or addition is made. Such costs are based on prudent and businesslike management practices and in accordance with established electric industry operation and maintenance practices. If extraordinary replacements exceeding $25,000 in costs are needed, Western will consult with Reclamation, the water users, and the Customers about financing the replacement.

The rate is not dependent upon the power and energy made available for sale. Instead, Customers will pay total PRP annual powerplant expenses in return for the total marketable PRP production. Each customer pays its proportional share of the OM&R expenses identified in the PRS in 12 monthly installments.

Environmental Compliance

In compliance with NEPA, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations 40 CFR parts 1500–1508; and DOE NEPA Regulations 10 CFR Part 1021, Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding this rate formula extension, including PRSs, letters, memorandums, and other supporting material made or kept by Western for the purpose of extending provisional rate formulas, is available for public review in the Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1534; and in the Corporate Services Office, Western Area Power Administration,12155 West Alameda Parkway, Lakewood, CO 80228–2802.

Submission to Federal Energy Regulatory Commission

The rate formula extension herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority vested in me as the Deputy Secretary of Energy, I confirm and approve on an interim basis, effective April 1, 2000, an extension of the rate formula for the Provo River Project of the Western Area Power Administration. The rate formula shall remain in effect on an interim basis, pending the Federal Energy Regulatory Commission's confirmation and approval of it or a substitute rate on a final basis through March 31, 2005.

Dated: February 14, 2000.

T.J. Glauthier,

Deputy Secretary.

[FR Doc. 00–5020 Filed 3–1–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Applications for the Post-2004 Resource Pool Power Allocations, Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of extension and modification of application requirements.

SUMMARY: Western Area Power Administration (Western) published a Notice of Allocation Procedures and Call for Applications, Post-2004 Resource Pool—Salt Lake City Area Integrated Projects (SLCA/IP) in the **Federal Register** on September 8, 1999. This notice extends the filing date for applications for an allocation of SLCA/IP power from the Post-2004 Power Pool by 3 months and waives the requirement for a Letter of Interest from applicants.

DATES: Entities interested in applying for an allocation of Western power must submit applications as described in the September 8, 1999, notice to Western's CRSP Management Center at the address in the **ADDRESSES** section. Applications must be received by 4 p.m., MDT, on June 8, 2000. Applicants are encouraged to use certified mail to deliver applications. Applications will be accepted via regular mail through the United States Postal Service if postmarked at least 3 days before June 8, 2000, and received no later than June 12, 2000. Western will not consider applications that are not received by the prescribed dates. Western will publish a Notice of Proposed Allocations in the **Federal Register** after evaluating all applications. Application procedures are provided in the September 8, 1999, notice.

ADDRESS: Applications must be submitted to the CRSP Power Marketing and Contracts Team Lead, CRSP Management Center, P.O. Box 11606, Salt Lake City, UT 84147–0606.

FOR FURTHER INFORMATION CONTACT: Burt Hawkes, CRSP Power Marketing and Contracts Team Lead, telephone (801) 524–3344, e-mail hawkes@wapa.gov; or Lyle Johnson, Public Utilities Specialist, telephone (801) 524–5585, e-mail ljohnson@wapa.gov.

SUPPLEMENTARY INFORMATION:

Authorities

Power resources are marketed pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c); and other acts specifically applicable to the projects involved.

Background

This notice provides an extension to file an application for power from the Post-2004 Resource Pool from March 8, 2000, to June 8, 2000, and waives the requirement for a Letter of Interest from applicants.

The September 8, 1999, (64 FR 48825) notice established a date 6 months after publication or March 8, 2000, for Applicant Profile Data (APD) to be received by the CRSP Management Center. Through the process of contacting potential applicants, it has become apparent that many potential new customers will not be able to meet this deadline. Western has received several requests to extend the time allowed for completion of the APD. A 3-month extension will allow applicants

sufficient time to contact serving utilities and collect the information requested in the APD.

Western originally required that a Letter of Interest from applicants be received by Western by October 25, 1999. Western's intent in requiring this Letter of Interest was to provide Western with advance information about the number of applicants, particularly Native American applicants. Western anticipated that receiving this information in advance would allow time to assist these applicants in preparing their APD. A number of Letters of Interest were received prior to the announced deadline. However, several letters were submitted and accepted after the deadline had passed. Since these letters were requested for Western's convenience, the requirement for a Letter of Interest will be waived. Applicants are still encouraged to provide Western a letter indicating that they intend to apply for an allocation and name the points of contact within their organization.

Preference entities who want to apply for a new allocation of power from Western's SLCA/IP must submit formal applications conforming to the procedures described previously. Eligibility criteria, allocation criteria, and procedures for applying for power from the SLCA/IP are provided in the September 8, 1999, notice.

Dated: February 17, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–5019 Filed 3–1–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6545–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements Under EPA's WasteWise Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Reporting and Recordkeeping Requirements Under EPA's WasteWise Program; EPA ICR No. 1698.04; and OMB Control No. 2050–0139, expiring 7/31/00. This is a request for extension of a currently approved information collection EPA ICR No. 1698.03. 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 May 1, 2000.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2000–WRIP–FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number F–2000–WRIP–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

The ICR is available on the Internet at http://www.epa.gov/wastewise/icr.htm.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rulemaking, contact Barbara A. Nichols, Office of Solid Waste (5306W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460–0002, 703–308–8659, nichols.barbaraa@epa.gov.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are those businesses, institutions, and government agencies that voluntarily sign up to participate in EPA's WasteWise program.

Title: Reporting and Recordkeeping Requirements Under EPA's WasteWise Program (OMB No. 2050–0139; EPA ICR No. 1698.04), expiring July 31, 2000.

Abstract: EPA's voluntary WasteWise program encourages businesses and other organizations to reduce solid waste through waste prevention, recycling, and the purchase or manufacture of recycled-content products. WasteWise participants include partners, which commit to implementing waste reduction activities of their choice, and endorsers, which choose to promote the WasteWise program and waste reduction to their members. Endorsers, which are typically trade associations or other membership-based associations, are asked to submit only a one-page form, the Endorser Registration Form, either electronically or in hard copy. This form identifies the organization, the principal contact, and the activities to which the Endorser commits. Partners are asked to fill out three forms as follows. The Partner Registration Form identifies the organization and the facilities that will participate in WasteWise, and includes the signature of a senior official that can commit the organization to the program. This form can be submitted either electronically or in hard copy. Each partner develops its own waste reduction goals and submits a one-page Goals Identification Form to EPA every three years, either electronically or in hard copy. Partners also report annually on the progress made toward achieving these goals in the Annual Reporting Form, estimating amounts of waste prevented and recyclables collected,

and describing buying or manufacturing recycled-content products, either electronically or in hard copy.

The EPA WasteWise program uses the voluntarily-submitted information to: (1) Identify and recognize outstanding waste reduction achievements by individual organizations, (2) compile aggregate results that indicate overall accomplishments of WasteWise partners, (3) identify cost-effective waste reduction strategies to share with other organizations, and (4) identify topics on which to develop assistance and information efforts.

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: The respondent burden for this collection is estimated to average 16 hours per response for the Endorser Registration Form; 16 hours per response for the Partner Registration Form; 25 hours per response for the Goals Identification Form; and 45 hours per response for the Annual Reporting Form. This results in an estimated one-time respondent burden of 16 hours for Endorsers, and an annual Partner respondent burden of 41 hours for new partners and 70 hours for current partners needing to reset 3 year goals and 45 hours for current partners not needing to reset goals. The estimated number of respondents is 1,120 in year 1; 1,270 in year 2; and 1,430 in year 3. Estimated total annual burden on all respondents is 57,510 hours in year 1; 64,260 hours in year 2; and 71,010 hours in year 3.

Burden estimates include 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: February 17, 2000.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–5040 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6545–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Performance Track Program—Environmental Achievement Track

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 proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Performance Track Program—Environmental Achievement Track, EPA ICR 1949.01. 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 May 1, 2000.

ADDRESSES: Roberta White (2129), U.S. EPA, 401 M Street, S.W., Washington D.C. 20460. Interested persons may obtain a copy of the ICR without charge by contacting Roberta White at (202) 260–5616

FOR FURTHER INFORMATION CONTACT: Ken Munis, (202) 260–9560. Fax number: (202) 401–3998

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which voluntarily choose to participate in the EPA Performance Track.

Title: Performance Track Program—Environmental Achievement Track, EPA ICR 1949.01

Abstract: The Environmental Protection Agency is developing a national Performance Track Program to reward and motivate top environmental performance. The Performance Track program is the outcome of the July, 1999 report, ''Aiming for Excellence: Actions to Encourage Stewardship and Accelerate Environmental Progress.'' In this report, the Agency committed to developing a Performance Track Program to encourage good environmental performers to continue striving to improve their environmental performance.

The Performance Track is a two-tiered, voluntary program designed to promote leadership in environmental protection through the use of Environmental Management Systems (EMS), Pollution Prevention Programs, and public reporting. Qualifying program participants will benefit from a variety of incentives, including, but not limited to, public recognition, reduced monitoring and reporting, and operational flexibility. EPA will announce and begin to solicit applications for level one of the Performance Track, the Environmental Achievement Track, in June of 2000. Level two, the Environmental Stewardship Track, will be announced in May of 2001.

Participation in the Performance Track program is voluntary. To be considered for acceptance into the program, applicants for the Environmental Achievement Track will be asked to submit information documenting their Environmental Managements System (EMS), history of compliance with EPA regulations, commitment to continuous environmental performance improvement, and commitment to public outreach and performance reporting. EPA will review the applications and notify the applicant within a specified time frame whether they qualify for the program. Upon acceptance to the Environmental Achievement Track, participants will be required to make environmental performance reports accessible to the public.

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: 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.

EPA estimates that approximately 250 facilities may voluntarily apply to the Performance Track annually. EPA further estimates that 200 facilities will be selected to participate in the Environmental Achievement Track (Tier 1). The Agency estimates that the burden required by this action for facilities will range from 120 hours to 270 hours. The best estimate burden is 230 hours. Facilities that have operational environmental management systems in place and currently share some environmental performance information with the public will experience burden at the lower end of the range. Other facilities may require more burden to demonstrate how they meet the entry criteria.

The following table summarizes the estimate burden for the Environmental Achievement Tier.

	Facility burden hours	Facility burden cost	Number of facilities	Total burden hours	Total burden cost
Application	40	$1,070	250	10,000	$270,000
Compliance Demonstration	80	2,375	200	15,550	475,000
EMS Documentation and Reporting	40	1,110	200	8,100	220,000
Continuous Performance Demonstration	40	1,060	200	7,500	210,000
Reporting & Public Outreach	30	860	200	6,400	175,000
Total	230	6,475	.....	47,550	1,340,000

Dated: February 25, 2000.

Daniel J. Fiorino,

Acting Director Office of Policy/Office of Policy Development.

[FR Doc. 00–5042 Filed 3–1–00; 8:45 am]

BILLING CODE 6050–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00287; FRL–6488–3]

Substantial Risk Information Reporting Under Section 8(e) of the Toxic Substances Control Act (TSCA); Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): Substantial Risk Information Reporting Under Section 8(e) of the Toxic Substances Control Act (TSCA) (EPA ICR No. 0794.08, OMB No. 2070–0046). This ICR involves a collection activity that is currently approved and scheduled to expire on June 30, 2000. The information collected under this ICR helps EPA identify and take steps to mitigate any substantial risk of injury to human health or the environment caused by chemical substances. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPPTS–00287 and administrative record number AR–223, must be received on or before May 1, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00287 and administrative record number AR–223 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Richard Hefter, Risk Assessment Division (7403), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3470; fax number: (202) 260–1283; e-mail address: hefter.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process or distribute a TSCA-covered chemical substance or mixture. Potentially affected categories and entities may include, but are not limited to:

Type of business	SIC codes
Chemicals and allied products	28
Petroleum refining	2911

This table 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 this table could also be affected. The Standard Industrial Classification (SIC) codes are provided to assist you and others in determining

whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. 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/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 4080 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPPTS–00287 and administrative record number AR–223. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00287 and administrative record number AR–223 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00287 and administrative record number AR–223. Electronic comments may also be filed online at many Federal Depository Libraries.

B. 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 technical person identified under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider When 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 collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record 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.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Substantial Risk Information Reporting Under Section 8(e) of the Toxic Substances Control Act (TSCA).

ICR numbers: EPA ICR No. 0794.08, OMB No. 2070–0046.

ICR status: This ICR is currently scheduled to expire on June 30, 2000. 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 information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: TSCA section 8(e) requires that any person who manufactures, imports, processes or distributes in commerce a chemical substance or mixture and who obtains information that reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment must immediately inform EPA of such information. EPA routinely disseminates TSCA section 8(e) data it receives to other Federal agencies to provide information about newly discovered chemical hazards and risks.

Responses to the collection of information are mandatory (see 15 U.S.C. 2607(e)). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 27.0 hours per response for initial TSCA section 8(e) submissions, and 5.0 hours per follow-up/supplemental section 8(e) submission. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Persons who manufacture, import, process or distribute a TSCA-covered chemical substance or mixture.

Estimated total number of potential respondents: 267.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 8,209.

Estimated total annual burden costs: $747,019.

VI. Are There Changes in the Estimates from the Last Approval?

Compared with the information collection most recently approved by OMB, there is a decrease of 1,291 hours in the estimated burden to respondents, from an estimated annual total burden of 9,500 hours currently approved to an average annual total burden of 8,209 hours in this request. This decrease reflects a reduction in the anticipated number of follow-up or supplemental TSCA section 8(e) notices received. In previous ICR renewals, EPA used an average ratio of 2.2 follow-up notices per each initial submission, based on historical experience. In recent years, however, the number of follow-up notices has fallen dramatically, due to changes in the nature of EPA's review of initial notices. As a result, EPA chose to use for this request an estimated average ratio of 0.75 follow-up or supplemental section 8(e) notices per each initial section 8(e) notice received.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 18, 2000.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–5049 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6546–5]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of a new Equivalent Method for O_3

AGENCY: Environmental Protection Agency.

ACTION: Notice of designation and receipt of application.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new equivalent method for measuring concentrations of O_3 in ambient air. Notice is also given that EPA has received a new application for an equivalent method determination from Andersen Instruments, Incorporated, Smyrna, Georgia, for a PM_{10} monitor.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711, Phone: (919) 541–2622, email: mcelroy.frank@epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the National Ambient Air Quality Standards. EPA hereby announces the designation of a new equivalent method for measuring O_3 in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new equivalent method for O_3 is an automated method which utilizes the measurement principle based on UV photometry. The newly designated method is identified as follows:

EQOA–0200–134, ''DKK Corporation Model GUX–113E Ozone Analyzer,'' operated at any temperature in the range of

15 °C to 35 °C and on any of the following measurement ranges: 0–0.100 ppm, 0–0.200 ppm, 0–0.5 ppm, or 0–1.000 ppm.

An application for an equivalent method determination for the method based on this DKK analyzer was received by the EPA on December 2, 1999. The analyzer is available commercially from the applicant, DKK Corporation, 4–13–14, Kichijoji Kitamachi, Musashino-shi, Tokyo, 180, JAPAN.

A test analyzer representative of this method has been tested by the applicant in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and the specifications and limitations (*e.g.,* operating temperature or measurement range) specified in the applicable designation method description (see the identification of the method above). Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, EPA/600/R–94/0386.'' Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (*e.g.,* by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in parts 50 and 53 for at least one year after delivery when main-tained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-certified facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of this method should be directed to the applicant.

Receipt of New Application

EPA is also hereby announcing that it has received a new application for an equivalent method determination under 40 CFR part 53. Publication of a notice of receipt of such applications is required by section 53.5.

On January 12, 2000, EPA received an application for an equivalent method determination from Andersen Instruments, Incorporated, 500 Technology Court, Smyrna, Georgia for its Series FH 62 C14 Suspended Particle Monitor for monitoring PM_{10} in the atmosphere. If, after appropriate technical study, the Administrator determines that this method should be designated as an equivalent method under 40 CFR part 53, notice thereof will be published in a subsequent issue of the **Federal Register**.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 00–5079 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30490; FRL–6488–7]

Pesticide Products; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30490, must be received on or before April 3, 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. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA. It is imperative that you identify docket control number OPP–30490 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Judy Loranger, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; office location/telephone number: 1921 Jefferson Davis Highway, Arlington, VA, 703 308–8056; and e-mail address: loranger.judy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS), codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' 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–30490. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30490 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, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30490. 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**.

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 views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

File Symbol: 66053–E. *Applicant:* ISP Fine Chemicals, Inc., 1979 Atlas St., Columbus, OH 43228. *Product Name:* Trimedlure. Pheromone. *Active ingredient:* Cyclohexanecarboxylic acid, 4 (or 5)-chloro-2-methyl-,1,1,-dimethylethyl ester at 98.0%. *Proposed classification/Use:* None. For Use in manufacturing or formulating registered pesticide products.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 16, 2000.

Janet L. Andersen,

Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–5051 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–921; FRL–6494–3]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food; Cry1F Plant-Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–921, must be received on or before April 3, 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 PF–921 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8375; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' 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–921. 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–921 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, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis 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–921. 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?

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 a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical 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 this petition contains 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: February 23, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. 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.

Mycogen Seeds c/o Dow AgroSciences LLC

0F6078

EPA has received a pesticide petition (0F6078) from Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054 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 to establish an exemption from the requirement of a tolerance for the plant-pesticide *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production in plants in or on all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Mycogen Seeds c/o Dow AgroSciences LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition.

Bacillus thuringiensis subspecies *aizawai* Cry1F insect control protein is expressed in corn plants to provide protection from key lepidopteran insect pests such as the European corn borer. Cry1F-protected field corn provides growers with a highly efficacious tool for controlling important insect pests in corn in a manner that is fully compatible with integrated pest management practices.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The Cry1F gene was isolated from *Bacillus thuringiensis* subspecies *aizawai* modified before it was inserted into corn plants. The Cry1F insecticidal protein has been adequately characterized. Several safety studies were conducted using a microbially produced test substance that contained 11.4% Cry1F protein. Studies conducted to establish the equivalence of the Cry1F protein obtained from corn or from a microbial source demonstrate that the materials are similar with respect to molecular weight, immunoreactivity, lack of post-translational modification (glycosylation) N-terminal amino acid sequence, and spectrum of bioactivity.

2. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* No analytical method is included because this petition requests an exemption from the requirement for a tolerance.

C. Mammalian Toxicological Profile

Cry proteins have been deployed as safe and effective pest control agents in microbial *Bacillus thuringiensis* formulations for almost 40 years. There are currently 180 registered microbial *Bacillus thuringiensis* products in the United States for use in agriculture, forestry, and vector control. The numerous toxicology studies conducted with these microbial products show no significant adverse effects, and demonstrate that the products are practically non-toxic to mammals. An exemption from the requirement of a tolerance has been in place for these products since at least 1971 (40 CFR 180.1011).

Toxicology studies conducted to determine the toxicity of Cry1F insect control protein demonstrated that the protein has very low toxicity. In an acute oral toxicity study in the mouse, the estimated acute LD_{50} by gavage was determined to be > 5,050 milligrams/kilograms of the microbially produced test substance. This dose is 12,190 × greater than the estimated 95th percentile for human dietary exposure to Cry1F protein resulting from consumption of foods derived from Cry1F protected corn. This estimate assumes that 100% of the corn crop produces Cry1F protein and that the protein is not degraded or otherwise eliminated in food processing. This extremely conservative estimate of the margin of exposure further supports the safety of Cry1F proteins to humans.

In an *in vitro* study, Cry1F protein was rapidly and extensively degraded in simulated gastric conditions in the presence of pepsin. Cry1F was completely proteolyzed to amino acids and small peptide fragments within 5 minutes at molar ratios approximating 1:100 (Cry1F:pepsin). This indicates that the protein is highly susceptible to digestion in the human digestive tract and that the potential for adverse health effects from chronic exposure is virtually nonexistent. Moreover, proteins in general are not known to be carcinogenic. A search of relevant data bases indicated that the amino acid sequence of the Cry1F protein exhibits no significant homology to the sequences of known allergens or protein toxins. Thus, Cry1F is highly unlikely to exhibit an allergic response.

The genetic material necessary for the production of the Cry1F insect control protein are nucleic acids unscheduled DNA synthesis which are common to all forms of plant and animal life. There are no known instances of where nucleic acids have caused toxic effects as a result of dietary exposure.

Collectively, the available data on Cry1F protein along with the safe use history of microbial *Bacillus thuringiensis* products establishes the safety of the plant pesticide *Bacillus thuringiensis* subspecies *aizawai* Cry1F insect control protein and the genetic material necessary for its production in all raw agricultural commodities.

D. Aggregate Exposure

In summary the potential for significant aggregate exposure to Cry1F protein is highly unlikely.

1. *Dietary exposure*—i. *Food*. Significant dietary exposure to Cry1F protein is unlikely to occur. Dietary exposures at very low levels, via ingestion of processed commodities, although they may occur, are unlikely to be problematic because of the low toxicity and the high degree of digestibility of the protein.

ii. *Drinking water*. In addition, the protein is not likely to be present in drinking water because the protein is deployed in minute quantities within the plant, and studies demonstrate that Cry1F protein is rapidly degraded in soil.

2. *Non-dietary exposure*. Because *Bacillus thuringiensis* subspecies *aizawai* Cry1F insect control protein is expressed in minute quantities and is retained within the plant, there is virtually no potential for dermal or inhalation exposure to the protein.

E. Cumulative Exposure

Common modes of toxicity are not relevant to consideration of the cumulative exposure to *Bacillus thuringiensis* Cry1F insect control protein. The product has demonstrated low toxicity and these effects do not appear to be cumulative with any other known compounds.

F. Safety Determination

1. *U.S. population*. The deployment of the product in minute quantities within the plant, the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, are all factors in support of Mycogen's assertion that no significant risk is posed by exposure of the U.S. population to *Bacillus thuringiensis* subspecies *aizawai* Cry1F insect control protein.

2. *Infants and children*. Non-dietary exposure to infants and children is not anticipated, due to the proposed use pattern of the product. Due to the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, dietary exposure is anticipated to be at very low levels and is not anticipated to pose any harm to infants and children.

G. Effects on the Immune and Endocrine Systems

Given the rapid digestibility of Cry1F delta endotoxin, no chronic effects are expected. Cry1F delta endotoxin, or metabolites of the endotoxin are not known to, or are expected to have any effect on the immune or endocrine systems. Proteins in general are not carcinogenic, therefore, no carcinogenic risk is associated with the Cry1F protein.

H. Existing Tolerances

There are no existing tolerances or exemptions from tolerance for *Bacillus thuringiensis* subspecies *aizawai* Cry1F.

I. International Tolerances

There are no existing tolerances or exemptions from tolerance for *Bacillus thuringiensis* subspecies *aizawai* Cry1F.

[FR Doc. 00–5050 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6546–4]

Agency Compliance Assistance Activity Plan: Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Draft Annual Compliance Assistance Activity Plan (Plan) reflects EPA's commitment to help entities comply with regulatory requirements and improve environmental performance through compliance assistance. In this draft Plan, EPA catalogues compliance assistance activities planned across the entire Agency for FY 2001. This comprehensive approach allows interested stakeholders to understand the Agency's current compliance assistance priorities and activities and to suggest where tools or additional emphasis are still needed. The consolidated information will also assist compliance assistance providers in determining how to focus their resources without duplicating EPA's efforts. Additionally, the regulated community will be able to anticipate what compliance assistance will be available to them in the near future.

The Agency is seeking stakeholder input on the content, structure and usefulness of the Plan. EPA intends to utilize this feedback in the FY02 budget

development process and the FY01 budget implementation process.

DATES: Comments must be submitted on or before April 17, 2000.

ADDRESSES: Interested persons may obtain a copy of the Annual Compliance Assistance Activity Plan from the Internet at *www.seattle.battelle.org/epa-icaa*. Copies may also be by obtained by contacting Joanne Berman at the contact information provided below.

FOR FURTHER INFORMATION CONTACT: Joanne Berman, (202) 564–7064; e-mail at *berman.joanne@epa.gov*; or by mail at U.S. Environmental Protection Agency, Office of Compliance, Mail Code 2224A, 1200 Pennsylvania Ave. NW, Washington, DC 20004.

SUPPLEMENTARY INFORMATION: The Agency is committed to listening to stakeholders as we continuously improve the way we do business. In early 1999 the Agency held a series of stakeholder meetings to ask how we can better serve our customers. The ''Aiming for Excellence'' report (Report) released by Administrator Browner in July 1999 responds to key issues raised during the stakeholder meetings. EPA's commitment to develop the Annual Agency Compliance Assistance Activity Plan is one of the most ambitious actions items identified in the Report.

Objectives of the Plan are to: (1) Identify and coordinate similar activities to leverage resources; (2) provide an inventory of the Agency activities to assist stakeholders in planning their activities; and (3) seek stakeholder input on the Agency's compliance assistance priorities. The FY01 Plan is the first attempt to undertake this intra-agency planning. EPA will strive to consider stakeholder comments as we begin implementing the FY01 activities, but any major change in strategic direction would be difficult since the Agency's FY01 budget submission already includes specific projects. However, stakeholder comments will have a more significant impact on the FY02 planning and budgeting cycle that begins this spring. It is the Agency's expectation that as future (FY02 and beyond) Plans are developed, stakeholder input will influence the directions in which we focus our compliance assistance resources.

Dated: February 25, 2000.

Michael M. Stahl,

Acting Director, Office of Compliance.

[FR Doc. 00–5043 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–65458]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–1998

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–1998 is available for public review. Annual U.S. emissions for the period of time from 1990–1998 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), Hydrofluorocarbons (HFC), perflourocarbons (PFC), and sulfur hexaflouride (SF6) emission. The inventory also includes estimates of carbon sequestration in U.S. forests and, new this year, estimates of soil carbon. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC). The Inventory of U.S. Greenhouse Gas Emissions and Sinks is the latest in a series of annual U.S. submissions to the Secretariat of the United Nations Framework Convention on Climate Change.

DATE: To ensure your comments are considered for the final version of this document, please submit your comments prior to April 3, 2000. However, comments received after that date will still be welcomed and will be considered for the next edition of this report.

ADDRESSES: Comments should be submitted to Mr. Wiley Barbour at: Environmental Protection Agency, Climate Policy and Programs Division (2175), 401 M Street, SW, Washington, DC 20460, Fax: (202) 260–6405.

If you wish to send an email with your comments, you may send the email to *barbour.wiley@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Barbour, Environmental Protection Agency, Office of Air and Radiation, Climate Policy and Programs Division, (202) 260–6972.

SUPPLEMENTARY INFORMATION: You may view and download the document referenced above on the US EPA global warming site at http://www.epa.gov/globalwarming/publications/emissions/.

Dated: February 23, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–5038 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 24, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 1, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT:

For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: *OMB Approval Number:* 3060–0751.

Title: Reports Concerning International Private Lines Interconnected to the U.S. Public Switched Network.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annual.

Total Annual Burden: 80 hours.

Total Annual Costs: $0.

Needs and Uses: The filings will be used by the Commission in reviewing the impact, if any, that end-user private line interconnections have on U.S. international settlements policy. The data will also enhance the ability of both the Commission and interested parties to monitor for unauthorized resale of international private lines that are interconnected to the U.S. public switched network.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5032 Filed 3–1–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communications Disorders Special Emphasis Panel.

Date: March 15, 2000.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Craig A. Jordan, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180; 301–496–8683. (Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4961 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

February 23, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) The accuracy of the Commission's burden estimate; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0095.

Title: Annual Employment Report—Cable Television.

Form Number: FCC 395–A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,950.

Estimate Time Per Response: 0.116 to 2.417 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 3,301 hours.

Total Annual Costs: None.

Needs and Uses: The Annual Employment Report, FCC Form 395–A, is used to assess industry trends. Every cable company with six or more full-time employees and all Satellite Master Antenna Television Systems serving 50 or more subscribers and having six or more full-time employees must complete FCC Form 395–A. It must be filed annually. Form 395–A identifies employees by gender, race, color, and/or national origin in 15 job categories and lists data on each entity's employees by their full or part-time employment status, job title, and job category. Cable companies with five or fewer employees only need to complete and file Sections I, II, and VIII of this form, and thereafter, only need file again if their employment increases. In addition, cable companies with six or more full-time employees must file a Supplemental Investigation Sheet once every five years. On January 20, 2000, the FCC adopted a Report and Order in MM Docket 98–204 and 96–16, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding. FCC Form 395–A has been revised to reflect the new rules and policies adopted in this Report and Order.

OMB Control Number: 3060–0113.

Title: Broadcast EEO Program Report.

Form Number: FCC 396.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit Institutions.

Number of Respondents: 2,000.

Estimated Time Per Response: 1.0 hours.

Frequency of Response: Reporting required upon license expiration.

Total Annual Burden: 3,000 hours.

Total Annual Cost: $100,000.

Needs and Uses: On January 20, 2000, the FCC adopted a Report and Order which modified the Commission's broadcast and EEO rules and policies consistent with the D.C. Circuit Court's decision in *Lutheran Church—Missouri Synod* v. *FCC* to ensure equal employment opportunity in the broadcast industry. The Commission is modifying FCC Form 396, the Broadcast Equal Employment Opportunity Program, to reflect the new rules and policies in this Report and Order. The FCC has reinstated the requirement that all AM, FM, TV, Low Power TV, and International stations broadcast licensees with five or more full-time employees, must file FCC Form 396 at the time of the renewal of their licensees. This form is used to evaluate a broadcaster's EEO program to ensure that satisfactory efforts are being made to comply with the FCC's EEO requirements.

OMB Control Number: 3060–0120.

Title: Broadcast Equal Employment Opportunity Model Program Report.

Form Number: FCC 396–A.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 5,000 hours.

Total Annual Cost: None.

Needs and Uses: Applicants seeking authority to construct a new broadcast station, to obtain assignment of construction permit or license, and/or to seek authority to acquire control of an entity holding construction permit or license must file FCC Form 396–A. The form is designed to assist the applicant in establishing an effective EEO program for their station. On January 20, 2000, the FCC adopted a Report and Order in MM Docket 98–204 and 96–16, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding. This form has been revised to reflect the new rules and policies in this Report and Order. The revisions include new instructions and questions in Section IV to clarify that recruitment measures should be broad and inclusive. Form 396–A will no longer ask applicants to list certain categories of proposed recruitment sources but will allow applicants to propose recruitment contacts which they believe will achieve wide dissemination and be productive in generating qualified applicants. Applicants will also be required to identify in Section V whether they elect to utilize the supplemental recruitment measures or to use the alternative recruitment program.

OMB Control Number: 3060–0574.

Title: Annual Employment Report.

Form Number: FCC 395–M.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 251.

Estimated Time Per Response: 0.166 to 2.417 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 394 hours.

Total Annual Cost: None.

Needs and Uses: FCC Form 395–M, Multi-Channel Video Programming Distributor (MVPD) Annual Employment Report, is used to assess industry employment trends. The report identifies employees by gender, race, color, and/or national origin in 15 job categories and collects data on full and part-time employment status, job titles, and job categories. Every MVPD with six or more full-time employees must file FCC Form 395–M annually, and a Supplemental Investigation sheet once every five years. An MVPD with five or fewer employees must file Sections I, II, and VIII only once, unless the MVPD's employment increases. On January 20, 2000, the FCC adopted a Report and Order, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, which modified the Commission's broadcast, cable, and MVPD EEO rules and policies consistent with the D.C. Circuit Court's decision in *Lutheran Church-Missouri Synod* v. *FCC.* Form 395–M has been revised to reflect the new rules and policies adopted in this Report and Order.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5031 Filed 3–1–00; 8:45 am]

BILLING CODE 6712–01–U

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 March 16, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Jimmie Michael Luecke, Giddings, Texas; Timothy Alan Kleinschmidt—Trustee for: Fred Luecke Trust, Giddings, Texas, and Susan Luecke Trust, Giddings, Texas; and Jimmie Luecke Children Partnership, Ltd., Giddings, Texas; to acquire additional voting shares of Giddings Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire additional voting shares of First National Bank, Giddings, Texas.

Board of Governors of the Federal Reserve System, February 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4984 Filed 3–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Bay National Corporation, Baltimore, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Bay National Bank (in organization), Baltimore, Maryland.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Union Bancshares, MHC, Freeport, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of USB Bankshares, Inc., Freeport, Illinois, and thereby indirectly acquire Union Savings Bank, Freeport, Illinois.

2. USB Bankshares, Inc., Freeport, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Union Savings Bank, Freeport, Illinois.

Board of Governors of the Federal Reserve System, February 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4983 Filed 3–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Terre Haute Savings MHC, Inc., Terre Haute, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Terre Haute Savings Bank, Terre Haute, Indiana.

Board of Governors of the Federal Reserve System, February 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–5077 Filed 3–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 16, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. The Bank of New York Company, Inc., New York, New York; The Chase Manhattan Corporation, New York, New York; Comerica Incorporated, Detroit, Michigan; First Union Corporation, Charlotte, North Carolina; FleetBoston Financial Corp., Boston, Massachusetts; HSBC Holdings plc, London, England; HSBC Holdings BV, Amsterdam, Netherlands; HSBC USA Inc., Buffalo, New York; The Royal Bank of Scotland Group, plc; The Royal Bank of Scotland plc; RBSG International Holdings Ltd; all of Edinburgh, United Kingdom; Citizens Financial Group, Inc., Providence, Rhode Island; and Summit Bancorp, Princeton, New Jersey; to assume through NYCE Corporation, Woodcliff, New Jersey, certain obligations of FleetBoston Financial Corp. relating to FleetBoston Financial Corp's shared electronic funds transfer network and thereby engage in the following data processing activities: (1) ATM services; (2) point of sale services; (3) terminal driving; (4) card authorization and management services; (5) gateway services; and (6) administrative services, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, February 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–4985 Filed 3–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 30, 2000. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E of the Martin Building (Terrace level). The meeting will begin at 8:45 a.m. and is expected to conclude at 1 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Gramm-Leach-Bliley Act Privacy Regulations: Discussion of the proposed Regulation P which would enable consumers to prevent a financial institution from sharing personal information with third parties that are not affiliated with the financial institution.

Gramm-Leach-Bliley Act Sunshine Provisions: Discussion of the proposal regarding disclosure of CRA agreements between financial institutions and community groups.

Credit Card Disclosures in Solicitations: Discussion of whether credit card disclosures in solicitations are provided in a clear and conspicuous manner.

Committee Reports: Council committees will report on their work.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit views to the Council regarding any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, 202–452–3544.

Board of Governors of the Federal Reserve System, February 28, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–5078 Filed 3–1–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m., March 13, 2000.

PLACE: National Finance Center, TANO Building, Conference Room 7, 13800 Old Gentilly Road, New Orleans, Louisiana.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Approval of the minutes of the February 14, 2000, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Approval of selection criteria for C and F Fund Managers and Annuity Vendor.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs (202) 942–1640.

Dated: February 29, 2000.

Elizabeth S. Woodruff,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 00–5170 Filed 2–29–00; 1:08 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: (1) TANF Data Report, ACF–199 (Including TANF Sampling and Statistical Methods Manual); (2) SSP–MOE Data Report, ACF–209 (Including TANF Sampling and Statistical Methods Manual).

OMB No.: 0970–0199.

Description: 42 U.S.C. 611 requires States and Tribal grantees to collect on a monthly basis and report to DHHS on a quarterly basis a wide variety of disaggregated case record information for their programs funded under TANF. If a State wants to qualify for a high performance bonus or receive a caseload reduction credit, the State must submit similar data for its separate State programs. A State or Tribal grantee may comply with these requirements by collecting or submitting case record information for its entire caseload or for a portion of the caseload that is obtained through the use of scientifically acceptable sampling methods. Currently 22 States are sampling their monthly caseloads to submit the required disaggregted data. We expect similar numbers to use sampling in the future and be subject to the following revisions. We are proposing to revise the current information collection requirements by: (1) Issuing the ''TANF Sampling and Statistical Methods Manual'' to provide guidance to States and Tribal grantees on the sampling process; (2) adding a section four to both data collection forms. The TANF Data Report—Section Four is designed to collect the weighting data for the TANF program. The SSP–MOE Data Report—Section Four is designed to collect the weighting for the SSP–MOE programs. The current OMB inventory indicates an approved burden of 516,680 hours for the TANF Data Report and the SSP–MOE Data Report. We estimate that the proposed revisions will increase the burden by 2,952 hours for a total revised estimated annual burden of 519,632 hours.

Respondents: State, Local or Tribal Government

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report	55	4	2,153.56	473,783
SSP–MOE Data Report	17	4	674.25	45,849

Estimated Total Annual Burden Hours: 519,632

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of

Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: February 25, 2000.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 00–4969 Filed 3–1–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Program Narrative Objective Work Plan (OWP).

OMB No.: 0980–0204.

Description: Program Narrative (OWP) information is collected as part of a competitive, discretionary grant application submitted to the Administration for Native Americans (ANA). Included with the OWP are standard, government-wide Federal assistance application forms (*e.g.,* SF–424, 424A, 424B, Non-Constructions Assurances, and various OMB certifications). The OWP provides information used by legislatively mandated project evaluation panels to compete and rank applications. ANA uses the OWP information to perform legislatively mandated project evaluations supporting the basis for recommendations to award or not award ANA grants. After funding, the OWP is used to reflect funded objectives and to administer and monitor ANA grants.

OWP information presents the grant applicants' locally-determined project objectives and plan to achieve those objectives. Economic development projects may attach a business plan. OWP information is presented as narrative and transcribed onto a government form titled, ''ANA Objective Work Plan''. In the past, ANA used two forms to collect the program narrative; *i.e.,* ''Program Narrative Objective Work Plan'' and ''Program Narrative Approach.'' The new, single form combines the two old forms and eliminates some information items.

Instructions for completing the OWP are provided in the ''Administration for Narrative Americans Application Packet for Financial Assistance.'' Instructions for compiling a complete application are provided in the packet. The OWP and instruction packet are used in all ANA competitive discretionary grant programs such as Social and Economic Development Strategies (SEDS), Native American Languages Preservation, Environmental Regulatory Enhancement, etc.

Resondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OWP	650	1	28	18,200

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: February 25, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–5029 Filed 3–1–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–0786]

Eka Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Eka Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of chlorine dioxide produced by another method.

DATES: Submit written comments on the petitioner's environmental assessment by April 3, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0A4716) has been filed by Eka Chemicals, Inc., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 173.300 Chlorine dioxide (21 CFR 173.300) to

provide for the safe use of chlorine dioxide produced by another method.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may submit to the Dockets Management Branch (address above) written comments by April 3, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 14, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–5015 Filed 3–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–0789]

National Center for Food Safety and Technology; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the National Center for Food Safety and Technology, Illinois Institute of Technology, has filed a petition proposing that the food additive regulations be amended to expand the conditions of safe use for X-radiation and electron beam energy sources for the treatment of prepackaged foods by irradiation.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0M4711) has been filed by the National Center for Food Safety and Technology, Illinois Institute of Technology, 6502 South Archer Rd., Summit-Argo, IL 60501–1933. The petition proposes to amend the food additive regulations in § 179.45 *Packaging materials for use during the irradiation of prepackaged foods* (21 CFR 179.45) to expand the conditions of safe use for X-radiation and electron beam energy sources for the treatment of prepackaged foods by irradiation.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: February 14, 2000.

Alan L. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–5014 Filed 3–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Urology Subcommittee of the Advisory Committee for Reproductive Health Drugs; 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). The meeting will be open to the public.

Name of Committee: Urology Subcommittee of the Advisory Committee for Reproductive Health Drugs

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 10, 2000, 9 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Sandra Titus or Jayne E. Peterson or Robin M. Spencer, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or e-mail: TITUSS@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12537. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will consider the safety and efficacy of new drug application 21–118, Uprima™ (apomorphine HCl tablets, sublingual, TAP Holdings) proposed for use in the treatment of erectile dysfunction.

Procedure: Interested persons may present data, information, or views, orally or in writing on issues pending before the subcommittee. Written submissions may be made to the contact person by April 5, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 5, 2000, 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.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 18, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–4947 Filed 3–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: March 29–0930, 2000.

Time: March 29, 2000, 8:30 am to 5:30 pm.

Agenda: The agenda includes a presentation on Racial and Ethnic Minority issues, report of the Director, OAR, and other business of the Council.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Time: March 30, 2000, 8:30 am to 12:30 pm.

Agenda: The agenda includes a briefing and membership comment and input session on the FY 2002 draft plan for HIV-Related Research.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Linda Reck, Head, Program, Planning and Evaluation, Office of AIDS Research, NIH, Bethesda, MD 20892, (301) 402–8655.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

February 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4957 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 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 Cancer Institute Special Emphasis Panel, Biology and Transplantation of the Human Stem Cell.

Date: March 19–21, 2000.

Time: 7 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson University Hotel, 615 Washington Avenue, S.E., Minneapolis, MN 55414.

Contact Person: William Merritt, PhD, Scientific Review Administrator, National Cancer Institute, National Institutes of Health, Grant Review Branch, 6116 Executive Boulevard, Room 8034, Bethesda, MD 20892, 301/496–9767.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.392, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4960 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–46; review of contract N01DE72623.

Date: March 6, 2000.

Time: 2 pm to 4:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892; (301) 594–2372.

The 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 Dental Research Special Emphasis Panel 00–28, R01 Review, Applicant Interview.

Date: March 27–28, 2000.

Time: 2 pm to 5 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yasaman Shirazi, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Dental & Craniofacial Res., Bethesda, MD 20892; (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–29; Review of R01.

Date: April 13, 2000.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892; (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–38; Review of K–23.

Date: April 19, 2000.

Time: 10:30 am to 11:30 am.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yasaman Shirazi, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes Institutes of Health, of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–21, Review of R01.

Date: April 20, 2000.

Time: 10:30 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yasaman Shirazi, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892; (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 00–31, Review of R42.

Date: April 24, 2000.
Time: 11:30 am to 1 pm.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892; (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4948 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel: Immunobiology of Aging.
Date: March 1–2, 2000.
Time: 7 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Empress Hotel, 7766 Fay Avenue, La Jolla, CA 92037.
Contact Person: James P. Harwood, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892; (301) 496–9666.

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 Aging Special Emphasis Panel: Review of Grant Applications.
Date: March 2, 2000.
Time: 9 am to 11 am.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Gateway Building Rm 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ramesh Vemuri, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892; (301) 496–9666.

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 Aging Special Emphasis Panel: To Review a Program Project Grant Application.
Date: March 7–8, 2000.
Time: 7 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Columbia East, 1612 North Providence Road, Columbia, MO 65202.
Contact Person: Arthur Schaerdel, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892; (301) 496–9666.

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 Aging Special Emphasis Panel: Review of Grant Application.
Date: March 10, 2000.
Time: 7:30 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Lawrence Center, 200 McDonald Drive, Lawrence, KS 66044.
Contact Person: Ramesh Vemuri, Office of Scientific Review, National Institute on Aging, the Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892; (301) 496–9666.

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 Aging Special Emphasis Panel: To review R03 grant applications.
Date: March 14–15, 2000.
Time: 2 pm to 12 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.
Contact Person: Jeffrey M. Chernak, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212; (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Review of Program Project Grant.
Date: April 6–7, 2000,
Time: 7 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Montgomery Village Ave, Gaithersburg, MD 20879.
Contact Person: Paul Lenz, The Bethesda Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892; (301) 496–9666.
(Catalogue of Federal domestic Asistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4949 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communications Disorders Special Emphasis Panel.
Date: March 21, 2000.
Time: 10 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Craig A. Jordan, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180; 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4950 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel.

Date: March 31, 2000.

Time: 3 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Sheehy, 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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4951 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel.

Date: March 6–7, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Helen R. Sunshine, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892; (301) 594–2881.

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. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4952 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel.

Date: March 22–24, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Houmam H Araj, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608; 301–443–1340.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4953 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 21, 2000.

Time: 9 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of

Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443—7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 21, 2000.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443—7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4954 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Community Based Prevention and Intervention Research (RFA ES–012).

Date: March 8–10, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: David P. Brown, MPH, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, K Grant Applications.

Date: March 31, 2000.

Time: 10 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: February 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4956 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 13–15, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: L.R. Stanford, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

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 Mental Health Special Emphasis Panel.

Date: March 28–29, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Health, NIH, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 6–7, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: L.R. Stanford, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–433–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4959 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel Immunogenics of Marrow Allografting.

Date: March 9, 2000.

Time: 11:15 am to 1:15 pm.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Room 2156, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Edward W. Schroder, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610; 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93–855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4962 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Drug Abuse Special Emphasis Panel Training and Career Development.

Date: March 8–9, 2000.

Time: 5 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, Msc 9547, Bethesda, MD 29089–2954; 301–443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4963 Filed 3–1–00; 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 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: Oncological Sciences Initial Review Group, Metabolic Pathology Study Section.

Date: March 13–15, 2000.

Time: 8 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

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: Cell Development and Function Initial Review Group, Cell Development and Function 6.

Date: March 13–14, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7804, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 13–14, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

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: March 13, 2000.

Time: 10:30 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

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: March 14–15, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2000.

Time: 8:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Herman Teitelbaum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1175, bakerh@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14, 2000.

Time: 10 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn National Airport, 2650 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 14–15, 2000.

Time: 7:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, corsaroc@csr.nih.gov.

(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: February 23, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4955 Filed 3–1–00; 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 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: Cardiovascular Sciences Initial Review Group, Experimental Cardiovascular Sciences Study Section.

Date: March 6–7, 2000.

Time: 8 am to 6:30 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

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: March 6–7, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The American Inn, 8130 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 6–7, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

Contact Person: Nadarajen A. Vydelingum, PhD, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 6–7, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., NW, Washington, DC 20007.

Contact Person: Patricia H. Hand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.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.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: March 6, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

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: Pathophysiological Sciences Initial Review Group, Respiratory and Applied Physiology Study Section.

Date: March 6–7, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@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.

Name of Committee: Cardiovascular Sciences Initial Review Group, Cardiovascular and Renal Study Section.

Date: March 6–7, 2000.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, MD 20814.

Contact Person: Anthony C. Chung, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213.

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: March 6–7, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1175 bakerth@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 6, 2000.

Time: 4 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

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: March 6, 2000.

Time: 12 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

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: Infectious Diseases and Microbiology Initial Review Group, Virology Study Section.

Date: March 7–8, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7880, Bethesda, MD 20892, (301) 435–1151.

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: March 7, 2000.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

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: March 7, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

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: March 7, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene M. Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, zimmerng@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 7, 2000.

Time: 1:30 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.

Contact Person: Robert Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

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: March 7, 2000.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

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: Cardiovascular Sciences Initial Review Group, Hematology Subcommittee 2.

Date: March 8–9, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, 301–435–1777, friedj@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 8–10, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Club Quarters DC, 839 17th Street, NW, Washington, DC 20006.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

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 of Scientific Review Special Emphasis Panel.

Date: March 8–10, 2000.

Time: 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

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: March 8, 2000.
Time: 11 am to 12 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

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: March 8, 2000.
Time: 1 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

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: March 8–10, 2000.
Time: 7 pm to 10 am.
Agenda: To review and evaluate grant applications.
Place: The Inn at Longwood Medical, 342 Longwood Avenue, Boston MA 02115.
Contact Person: Marjam G. Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

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: March 9, 2000.
Time: 8 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Westin Fairfax Hotel, 2100 Massachusetts Ave, NW, Washington, DC 20008.
Contact Person: Ranga V Srinivas, PhD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 9–10, 2000.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Clarion Hampshire Hotel, 1310 New Hampshire Ave, NW, Washington, DC 20036.
Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 9–10, 2000.
Time: 9 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.
Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–EVR–01.
Date: March 9, 2000.
Time: 10 am to 11:30 am.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Garrett V. Keefer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM–2 (02).
Date: March 9, 2000.
Time: 11 am to 3 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, Versailles IV Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 9–10, 2000.
Time: 2 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.
Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, shinowan@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 9–11, 2000.
Time: 5 p.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Regal Harvest House, 1345 Twenty-Eight Street, Boulder, CO 80302.
Contact Person: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

Name of Committee: Center for Scientific Review Special Emphasis Panel, The History of Medicine Study Section.
Date: March 10, 2000.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 10, 2000.
Time: 8:30 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–0676.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 10, 2000.
Time: 12 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: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 60461, MSC 7890, Bethesda, MD 20892, 301–435–1159, ameros@csr.nih.gov.

(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: February 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4958 Filed 3–1–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences, National Toxicology Program; Request for Comments on Substances Nominated to the National Toxicology Program (NTP) for Toxicological Studies and on the Testing Recommendations Made by the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC); Solicitation of Information on Nominated Substances

Summary

The National Toxicology Program (NTP) routinely solicits, accepts and reviews for consideration nominations for toxicological studies to be undertaken by the Program on substances of potential human health concern. Nominations are received from Federal agencies, industry, the public, and other interested parties and undergo several levels of review before toxicological studies are designed and implemented. The NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) serves as the first level of review for NTP nominations. At the December 13, 1999 meeting of the ICCEC, 12 new nominations were reviewed and testing recommendations made. As part of an effort to inform the public and to obtain input about the selection of chemicals for evaluation, the NTP routinely seeks public comment on (1) substances nominated to the Program for toxicological studies and (2) the testing recommendations made by the ICCEC. This announcement outlines briefly the process for nomination and selection of substances for NTP study, presents the testing recommendations made by the ICCEC at the December 13, 1999 meeting, requests comment on those nominations and recommendations, and solicits the submission of additional information for consideration by the NTP in its subsequent evaluation of the nominations.

Background

1. Nomination and Selection of Substances for NTP Studies

The nomination and selection for study of chemicals and agents with the highest potential for adversely impacting public health are essential to the success of the NTP's testing program. The nomination process is open and nominations are solicited from academia, Federal and State regulatory and health agencies, industry, and labor unions, as well as from environmental groups and the general public. Particular assistance is sought for the nomination of studies to be undertaken by the NTP that permit the testing of hypotheses to enhance the predictive ability of future NTP studies, address mechanisms of toxicity, or fill significant gaps in the knowledge of the toxicity of chemicals or classes of chemicals. Substances selected for study generally fall into two broad overlapping categories: (1) Those substances of greatest concern for public or occupational health and (2) chemicals for which toxicological data is needed to reduce uncertainty in risk assessment by aiding species-to-species extrapolation and understanding dose-response relationships. Substances may be studied for a variety of health-related effects, including but not limited to, reproductive and developmental toxicity, genotoxicity, immunotoxicity, metabolism and disposition, as well as carcinogenicity. The possible public health consequences of exposure remain the over-riding factor in the decision to study a particular chemical or agent. Selections for government testing are based on the principle that responsible manufacturers will evaluate their own chemicals or agents for health and environmental effects as mandated by Congress under legislative authorities. Increased efforts continue to be focused on: (1) Improving the quality of the nominations of chemicals, environmental agents, or issues for study so that public health and regulatory needs are addressed; (2) broadening the base and diversity of nominating organizations and individuals; and (3) increasing nominations for studying toxicological endpoints in addition to carcinogenesis.

II. Review Process for Substances Nominated for NTP Studies

Nominations are first reviewed by a multi-disciplinary NIEHS committee to determine whether the nominated agent has undergone adequate toxicological testing or has been previously considered by the NTP. For nominations not eliminated from consideration or deferred at this stage, the available literature is examined in detail to prepare Toxicological Summaries that describe and summarize relevant information for each nominated substance. Included in each Toxicological Summary are information on chemical and physical properties, production levels, use, human exposure, regulatory status, toxicological effects, and rationale for the nomination. The Toxicological Summaries are distributed to the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC), which is composed of representatives from the Agency for Toxic Substances and Disease Registry, Consumer Product Safety Commission, Department of Defense, Environmental Protection Agency, Food and Drug Administration's National Center for Toxicological Research, Occupational Safety and Health Administration, National Cancer Institute, National Institute of Environmental Health Sciences, National Institute for Occupational Safety and Health, and the National Library of Medicine. ICCEC members are assigned as reviewers for each substance after consideration of the nature of its uses and exposure so that, to the extent possible, appropriate regulatory concerns will be addressed. Members are requested to identify their agency's interests, if any, in the chemical and to provide any relevant information from their respective agencies regarding the nominated chemicals or structurally related substances. During the evaluation process, the NTP works actively with regulatory agencies and interested parties to supplement the information about nominated substances and to ensure that the nomination and selection process meets regulatory and public health needs.

At its meeting to consider the nominated substances, the ICCEC makes testing recommendations including testing priorities and also may make recommendations for studies in addition to those requested by the nominator. Summaries of the ICCEC recommendations and any public comments received on these nominations are then presented to the NTP Board of Scientific Counselors (the Program's external scientific advisory committee) for review and comment in an open public session. The ICCEC's recommendations, NTP Board of Scientific Counselors' recommendations, and public comments are incorporated into recommendations that are then submitted to the NTP Executive Committee, the Federal interagency policy oversight body. For each substance nominated for the various types of studies, the NTP Executive Committee reviews and approves action to move forward to test, defer testing, or remove from testing consideration, and recommends testing priorities. The selection of a substance by the Executive Committee does not automatically commit the NTP to its evaluation. The priority of the nominations and the proposed studies are assessed during the nomination and

selection process and reassessed during the study design process. During any of these stages, a chemical or study may be withdrawn if applicable research data or higher priority studies are identified, or if a study proves impractical. A broad range of regulatory and toxicological concerns is addressed during the nomination and selection process through the participation of representatives from Federal agencies concerned with public health issues. In addition, representatives from non-government organizations including academia, industry, labor, and public interest sit on the NTP Board of Scientific Counselors, and thus have input into chemical selection decisions.

Nominated Substances and ICCEC Review

At its meeting on December 13, 1999, the ICCEC reviewed 12 nominations for NTP studies. For six of these nominations, metabolism, toxicity, or carcinogenicity studies were recommended. No studies were recommended at this time for two nominations, and a testing recommendation for four chemicals was deferred pending receipt of (1) additional data from other organizations on related studies completed, anticipated, or in progress or (2) information on production, exposure, and use patterns. The nominated substances with CAS numbers, nomination source, types of studies recommended, study rationale, and other information are given in the attached tables.

Request for Comment

Interested parties are encouraged to provide comments or supplementary information on the nominated substances and recommendations that appear in this announcement. The Program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies, as well as information on current production levels, human exposure, use patterns, or environmental occurrence for any of the substances listed in the attached tables. To provide comments or information, please contact Dr. William Eastin at the address given below within 60 days of the publication date of this announcement. Persons submitting comments or additional information are asked to include their name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any) with the submission. An electronic copy of this announcement as well as further information on the NTP and the NTP Chemical Nomination and Selection Process can be accessed through the NTP web site. The URL for the NTP homepage is http://ntp-server.niehs.nih.gov.

Contact may be made by mail to Dr. William Eastin, NIEHS/NTP, P. O. Box 12233, Research Triangle Park, North Carolina 27709; by telephone at (919) 541–7941; by FAX at (919) 558–7057; or by email at eastin@niehs.nih.gov.

Dated: February 17, 2000.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

Attachment—Substances Nominated to the NTP for Study and Testing Recommendations Made by the ICCEC on December 13, 1999

TABLE 1.—SUBSTANCES RECOMMENDED FOR TESTING

Substance [CAS No.]	Nominated by	ICCEC recommendations	Study rationale; other information
1-Bromopropane [106–94–5] and 2-Bromopropane [75–26–3].	OSHA NIOSH	*1-Bromopropane* —carcinogenicity —reproductive and developmental toxicity —toxicokinetics —mechanistic studies —neurotoxicity —genotoxicity —exposure studies in workers 2-Bromopropane —subchronic toxicity	Reported increasing production and use in many industrial applications as an alternative to ozone depleting substances; available data from limited repeat dose studies indicate toxicity to multiple organ systems. 2-Bromopropane is a contaminant in reagent grade 1-Bromopropane with known reproductive toxicity.
Chitosan [9012–76–4]	NCI	—mechanistic studies to evaluate vitamin E and mineral depletion	Significant human exposure through use as a dietary supplement and other commercial applications; potential for toxicity from interference with dietary fat absorption.
DNA-based products	FDA	—establish joint NIEHS/FDA program to evaluate long-term toxicity in anticipation of regulatory needs	Rapidly growing market for DNA-based therapeutic agents and a lack of adequate mechanisms and methodologies for evaluating safety.
Juglone [481–39–0]	NCI	—mechanistic studies —metabolism studies —mouse lymphoma assay —mammalian mutagenicity —carcinogenicity testing pending results of preliminary studies	Potential human exposure resulting from use of walnut-based products as dietary supplements and natural dyes and stains; suspicion of carcinogenicity based on quinone structure.
Potassium ferricyanide [13746–66–2]	NCI.	—genotoxicity —subchronic toxicity	Potential consumer and worker exposure resulting from use in photographic processing; suspicion of toxicity based on potential for redox cycling; inadequate toxicity information available.
Radio frequency radiation emissions of wireless communication devices.	FDA	—establish interagency program to design studies assessing cancer and non-cancer health effects to fulfill regulatory needs	Widespread consumer and worker exposure; available data is inadequate to properly assess safety.

TABLE 2.—SUBSTANCES FOR WHICH NO TESTING IS RECOMMENDED AT THIS TIME

Substance [CAS No.]	Nominated by	Nominated for	Rationale for not testing
Cafestol [469–83–0] and Kahweol [6894–43–5].	Private individual	—toxicity and carcinogenicity testing.	Anti-carcinogenic effects demonstrated in animal studies; limited data indicate low potential for toxicity; other natural products with higher potential for toxicity and human exposure exist; ongoing research efforts as opposed to new testing may provide basis for determining relevance of metabolic modulatory effects to chronic toxicity.
Plumbagin [481–42–5].	NCI	—mechanistic studies —metabolism studies —mouse lymphoma assay —mammalian mutagenicity —carcinogenicity	Structurally similar to Juglone which is selected for study; low magnitude and/or prevalence of human exposure; adequate evidence of acute and reproductive toxicity.

TABLE 3.—SUBSTANCES FOR WHICH A TESTING RECOMMENDATION IS DEFERRED PENDING RECEIPT AND CONSIDERATION OF ADDITIONAL INFORMATION

Substance [CAS No.]	Nominated by	Nominated for	Additional information needed
Ethylenebis (tetrabromophthalimide) [32588–76–4].	NIEHS	—toxicity and carcinogenicity testing	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures.
Terpinolene [586–62–9]	NIEHS	—toxicity and carcinogenicity testing	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures; study results for structurally related compounds.
Tetrabromophthalic anhydride [632–79–1].	NIEHS	—toxicity and carcinogenicity testing	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures.
Texanol benzyl phthalate [16883–83–3] or [32333–99–6].	NIEHS	—toxicity and carcinogenicity testing	Ongoing and planned industry testing efforts; better characterization of uses and potential human exposures.

[FR Doc. 00–4964 Filed 3–1–00; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of Parts I and II of the Program Announcement (PA) before preparing an application. Part I is entitled Community Action Grants for Service Systems Change (PA00–003). Part II is entitled General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated Number of awards	Project period
Community Action Grants for Service Systems Change.	4/19/00* recurring submission dates of May 10 and September 10 thereafter for Phase I & II.	$3 million, phase I $1.5 million, phase II.	20–30, phase I .... 10–20, phase II ...	1 year. 1 year.

*Only Phase II applications will be received on April 19, 2000. Thereafter, the schedule provided above will be in effect for Phase II applications starting with the next receipt date of September 10, 2000.

There are two addenda to PA00–003: American Indian and Alaska Native Youth Priority Initiative, Phase I; and Hispanic Priority Initiative, Phase I.

The American Indian and Alaska Native (AI/AN) Youth Priority Initiative addendum provides funds to support the adoption of exemplary practices related to the delivery and organization of services for AI/AN Youth with serious emotional and substance abuse problems. $450,000 in FY 2000 is available to support 5 to 10 awards under this initiative. Federally recognized tribal governments, tribal organizations, and urban Indian organizations as defined by the Indian Self Determination Act and the Indian Health Care Improvement Act are eligible. The terms ''Indian,'' '' tribal,'' ''AI/AN,'' and ''Native American'' include Alaska Native organizations. The receipt date for Phase I applications under this initiative is May 10, 2000.

The Hispanic Priority Initiative addendum provides funds to support the adoption and implementation of exemplary practices related to the delivery and organization of services for Hispanic adults and adolescents with mental health and/or substance abuse problems. Up to $1.5 million in FY 2000 is available to support 8–10 awards. Applications may be submitted by units of State and local governments including tribal governments and by domestic private non-profit and for profit organizations such as community-based organizations, universities, colleges, and hospitals. In addition to the above, applications for this Initiative must target Hispanics, identify an exemplary practice specific to the needs of Hispanics, and demonstrate the involvement of leadership from the Hispanic community.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 3 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7701, Bethesda, Maryland 20882–7701.*

Application Deadlines: The deadline for receipt of Phase II applications is April 19, 2000 and September 10, 2000. Thereafter receipt dates for Phase II will be May 10 and September 10 each year. For Phase I, the receipt dates are May 10 and September 10 each year.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a ''menu'' of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

* Applicants who wish to use express mail or courier service should change the zip code to 20817.

2. Criteria for Review and Funding

2.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

2.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 2000 SAMHSA Activities

Community Action Grants for Service Systems Change (short title: Community Action Grants, PA00–003).

• *Application Deadline:* The deadline for receipt of Phase II applications is April 19, 2000 and September 10, 2000. Thereafter receipt dates for Phase II will be May 10 and September 10 each year. For Phase I, the receipt dates are May 10 and September 10 each year.

• *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS), in partnership with the Center for Substance Abuse Prevention and the Center for Substance Abuse Treatment, announces the availability of funds to support the adoption and implementation of exemplary practices related to the delivery and organization of services for children with serious emotional disturbance or adults with serious mental illness. The target population may also have co-occurring disorders, such as substance abuse or other mental, emotional, or behavioral disorder. This program is made up of two types of grants: Phase I Grants: Consensus building and decision support; and Phase II Grants: Implementation support.

• *Eligible Applicants:* Phase I applications may be submitted by units of State or local government and by domestic private non-profit and for profit organizations such as community-based organizations, provider and consumer groups, universities, colleges, and health care organizations. SAMHSA encourages applications from consumer and family organizations.

Phase II applications are restricted to past or current Phase I grantees. To be eligible, Phase II applicants must demonstrate that they have met the Phase I requirement and are ready to implement their exemplary practices.

This restriction is due to limited funding availability to support a second phase of the program and to SAMHSA's desire to document, monitor, and evaluate the process and outcome of both the consensus building and implementation phases.

• *Amount:* Approximately $3 million will be available to support 20 to 30 Phase I awards each year. About $1.5 million will be available to support 10 to 20 Phase II awards each year.

Period of Support: The period of support for both Phase I and Phase II will be for one year each.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• *Program Contact:* For questions concerning program issues with CMHS, contact: Santo J. (Buddy) Ruiz, Community Support Program Branch, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3653.

CSAT: Jane Ruiz, Division of Practice and Systems Development, Clinical Interventions Branch, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8237.

CSAP: Donna Simms d'Almeida, Division of State and Community Systems Development, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 930, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1789.

For questions regarding grants management issues, contact: Steve Hudak, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Room 15C–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301)443–4456.

• *Application kits are available from:* National Mental Health Services, Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Telephone: 1–800–789–2647, TTY: (301) 443–9006, Fax: (301) 984–8796.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should

send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–4944 Filed 3–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of Parts I and II of the Guidance for Applicants (GFA) before preparing an application. Part I is entitled Community Initiated Prevention Interventions. Part II is entitled General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated number of awards	Project period
Community Initiated Prevention Interventions	9/10/00	$2 million	7 awards	3 years

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001-00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 3 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

Application Deadlines: The deadline for receipt of applications is September 10, 2000.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the

*Applicants who wish to use express mail or courier service should change the zip code to 20817.)

prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a ''menu'' of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Criteria for Review and Funding

2.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

2.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 2000 SAMHSA Activities

Community-Initiated Prevention Interventions (short title Community-Initiated Interventions: SP00–001).

- *Application Deadline:* The receipt date is September 10, 2000.
- *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of community-initiated grants to support Knowledge Development with At-Risk Populations. The purpose of this grant program is to support knowledge development by soliciting applications for studies that field test effective substance abuse prevention interventions that have been shown to prevent, delay or reduce alcohol, tobacco, or other illegal drug use and/or associated social, emotional, behavioral, cognitive and physical problems among at-risk populations in their local community(ies) and/or other domains. These other domains include the individual, the family, the school, the health care provider, and the workplace.
- *Eligible Applicants:* Applications may be submitted by units of State and local or Indian Tribal governments, universities and colleges, and by domestic private non-profit and for profit organizations such as community-based organizations and health care delivery systems including managed care organizations and hospitals.
- *Amount:* $2 million in total costs (direct and indirect) to support seven awards in FY2000.

Period of Support: Support may be requested for a period of up to 3 years.

- *Catalog of Federal Domestic Assistance Number:* 93.230.
- *Program Contact:* For questions concerning program issues, contact: Soledad Sambrano, Ph.D., Division of Knowledge Development and Evaluation, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301)443–9110.

For questions regarding grants management issues, contact:, Edna Frazier, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 640, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6816.

- Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20857, Telephone: 1–800–729–6686, TDD: (800) 487–4889, Fax: (301) 468–6433.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance.

Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–4943 Filed 3–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of Parts I and II of the Guidance for Applicants (GFA) before preparing an application. Part I is entitled Cooperative Agreements for Parenting and Family Strengthening Prevention Interventions: A Dissemination of Innovations Initiative. Part II is entitled General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated number of awards	Project period
Parenting and Family Strengthening Prevention Interventions: A Dissemination of Innovations Initiative.	6/13/00	$2.5 million	20–30	2 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001-00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA has published additional notices of available funding opportunities for FY 2000 in past issues of the **Federal Register**.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health. Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

Application Deadlines: The deadline for receipt of applications is June 13, 2000.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 4).

*Applicants who wish to use express mail or courier service should change the zip code to 20817.

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 2000 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a ''menu'' of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 2000 KD&A program will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and it is question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, and preparation of special materials will be used, in addition to normal communication means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

3.1 General Review Criteria

Review criteria that will be used by the peer review groups are specified in the application guidance material.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 2000 SAMHSA Activities

Cooperative Agreement for Parenting and Family Strengthening Prevention Interventions: A Dissemination of Innovations Initiative (short title: Family Strengthening, SP00–002).

• *Application Deadline:* The receipt date is June 13, 2000.

• *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP), with funding from the Center for Mental Health Services, announces the availability of cooperative agreements to support the Family Strengthening program. This program will solicit applications to (1) increase the capacity of local communities to deliver best practices in effective parenting and family programs in order to reduce or prevent substance abuse, (2) document the decision making processes for the selection and testing of effective interventions in community settings, and (3) determine the impact of the interventions on the target families within this study. All grantees are expected to modify the program they select to further tailor interventions to heighten cultural appropriateness and increase effectiveness for their local families. The selected intervention should maximize effectiveness in preventing or reducing alcohol, tobacco or other illegal drug use as well as associated social, emotional, behavioral, cognitive, and physical problems of parents and their children.

• *Eligible Applicants:* Applications may be submitted by domestic public or private non-profit and for profit entities, and units of State or local governments, (such as community-based organizations, universities, colleges, and hospitals).

• *Amount:* Up to $2.5 million in total costs (direct and indirect) to support 20–30 awards in FY2000.

Period of Support: Support may be requested for a period of up to 2 years.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• *Program Contact:* For questions concerning program issues, contact: Rose Kittrell, Acting Team Leader, High Risk Youth/Replication Team, Division of Knowledge Development and Evaluation, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0353.

Technical Assistance Line: (301) 443–6612 or Anne Mathews-Younes, Ed.D., Chief, Special Programs Branch, Division of Program Development/Special Populations and Projects, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17C–17, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0554.

For questions regarding grants management issues, contact: Edna Frazier,, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 640, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6816.

• Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847, Telephone: 1–800–729–6686, TDD: (800) 487–4889, Fax: (301) 468–6433.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 24, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–4945 Filed 3–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan for Ouray National Wildlife Refuge, Vernal, UT

AGENCY: Fish and Wildlife Service. Interior.

ACTION: Notice of availability; correction.

SUMMARY: In the original submission published on February 24, 2000, the public comment period and who to send written comments to was inadvertently omitted.

DATES: Submit written comments by April 3, 2000.

ADDRESSES: Send written comments to Allison Banks, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, CO 80225. A copy of the Plan may be obtained by writing to U.S. Fish and Wildlife Service, 266 West 100 North, Suite 2, Vernal, UT 84078; or download from http://www.r6.fws.gov/larp/.

FOR FURTHER INFORMATION CONTACT: Allison Banks, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, CO 80225, 303/236–8145 extension 626; fax 303/236–4792.

SUPPLEMENTARY INFORMATION: Ouray NWR is located in northeast Utah. Implementation of the Plan will focus on adaptive resource management of wetland, grassland, and semidesert shrubland habitats, restoration and improved management of riparian bottomlands, recovery of endangered fish species of the Upper Colorado River Ecosystem, and opportunities for compatible wildlife-dependent recreation. Habitat monitoring and evaluation will be emphasized as the Plan is implemented. Opportunities for compatible wildlife-dependent recreation will continue to be provided.

The Notice of Availability published on February 24, 2000 (65 FR 9291), is corrected as follows: on page 9291, middle column, a date paragraph is added and the addresses paragraph is revised on where to send written comments.

[FR Doc. 00–5006 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and an Associated Environmental Assessment for the Turnbull National Wildlife Refuge; and Notice of Public Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and associated environmental assessment; and notice of public meetings.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and an Environmental Assessment for Turnbull National Wildlife Refuge (Refuge), Stevens County, Washington. The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations for the following purposes: (1) To advise other agencies and the public of our intentions; (2) to obtain suggestions and information on the issues to be addressed in the CCP; and (3) to announce public meetings for scoping. We estimate that the draft CCP and associated Environmental Assessment will be available in March of 2001.

DATES: Submit comments on or before April 3, 2000. The Service will host two public meetings, the first on February 29, 2000, and the second on March 1, 2000. See **ADDRESSES** for meeting locations.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Turnbull National Wildlife Refuge, 26010 South Smith Road, Cheney, Washington, 99004. Public meetings will be held on February 26, from 6 to 9 p.m., at the Cheney High School Library, 460 North 6th Street, Cheney, Washington, and March 1, from 6 to 9 p.m. at Spokane Falls Community College, Building 17, Lounges A, B, and C, at 3410 West Fort George Right Drive, Spokane, Washington.

FOR FURTHER INFORMATION CONTACT: Nancy Curry, Refuge Manager (509) 235–4723.

SUPPLEMENTARY INFORMATION:

Background Information

The Service is beginning the process of developing a 15-year management plan for Turnbull National Wildlife Refuge. The Refuge has recently completed a Habitat Management Plan, which outlines objectives and strategies for managing Refuge habitats in a way to achieve the Refuge purpose and the system mission. The Refuge also recently completed a Fire Management Plan. These two plans will be incorporated with no anticipated changes to the CCP.

The CCP will include the following topics: (1) An assessment of existing public uses on the Refuge and within the region; (2) an assessment of Refuge facilities and programs available for public use and enjoyment; (3) the biological and physical resources and their condition (to be excerpted from the Habitat Management Plan); (4) identification of the long term goals and objectives of the Refuge, consistent with the National Wildlife Refuge System mission; (5) strategies for management of public access and uses, including but not limited to the existing uses of wildlife observation and photography, environmental education and interpretation, and hiking; (6) strategies for management of other Refuge resources including cultural resources; and (7) strategies for protecting neighboring resources that affect the Refuge. In addition, the habitat and fire management objectives and strategies already described in the Habitat Management Plan and the Fire Management Plan will be incorporated into this document.

We have identified preliminary issues and opportunities to address in the CCP. Comments and concerns received will be used to identify additional issues and prepare draft alternatives. The preliminary issues fall under two categories, Public Uses and Land Protection. Brief descriptions of those issues follow.

Public Uses. The new Refuge Improvement Act specifies that hunting, among other wildlife-dependent uses, is to be considered. Turnbull Refuge has always been closed to hunting. There are concerns about whether a large enough area exists for safe big game hunting, whether the big game population is in need of harvest management, and whether or not fall waterfowl populations are large enough in this area to support a recreational hunt.

Does the public wish to see any further developments in the public use area (*i.e.,* improved access, expansion of the public use area, added facilities, interpretive signs, and staff facilitated activities)? What effect would expanded public uses have on existing wildlife populations and distribution? Is the current sanctuary status of the Refuge a necessary benefit to wildlife in an area of rapid urban expansion?

A recent ''rails-to-trails'' conversion has occurred in the area and five miles of the Columbia Plateau Trail, extending from Pasco to Spokane, now runs right through the heart of the Refuge's closed area. Visitors on this trail will possibly triple Refuge visitation. The staff at the Refuge has concerns about managing this new use.

Should the Service support community demand for environmental education and interpretation on the Refuge?

Land Protection. The Refuge recently completed a Habitat Management Plan which identified the protection of water quality and quantity and the protection of native habitat and species as Refuge goals. These goals include objectives to protect Refuge water sources, water quality, and key habitats that affect Refuge resources from outside the current boundary. These goals also support the maintenance of biologically effective landscape linkages and corridors between the Refuge and other undeveloped areas of this ecoregion. Several tools exist to accomplish this, ranging from public education to voluntary conservation by neighboring landowners, partnerships and incentive programs such as the consideration of conservation easements on private land, and land acquisition from willing sellers. The CCP will explore various strategies for protecting the lands and habitats within the ecosystem.

Public Meetings

With the publication of this notice, the public is encouraged to attend public meetings and/or submit written comments for staff to consider in developing the CCP. Two public scoping meetings will be held in February. The format will be a presentation on the planning process and the Refuge followed by facilitated breakout sessions to record public interests. Dates, locations, and times follow.

(1) February 29, 2000, 6 p.m. to 9:00 p.m., Cheney High School Library, 460 N. 6th Street, Cheney, Washington, 99004. The presentation portion of the meeting will begin at 6:30 p.m.

(2) March 1, 2000, 6 p.m. to 9 p.m., Spokane Falls Community College, Building 17, Lounges A, B, and C, 3410 West Fort George Right Drive, Spokane, Washington, 99224. The presentation portion of the meeting will begin at 6:30 p.m.

Public Comments

Comments already received are on record and need not be resubmitted. All comments received from individuals on Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations (40CFR 1506.6(f)), and other Service and Departmental policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, telephone numbers of commenting individuals will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: February 24, 2000.

William B. Zimmerman,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–4974 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council) Meeting Announcement

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet at 9 a.m., March 9, 2000, to select North American Wetlands Conservation Act (NAWCA) proposals for recommendation to the Migratory Bird Conservation Commission. The meeting is open to the public.

DATES: March 9, 2000, 9 a.m.

ADDRESSES: The meeting will be held in Room S–128, U.S. Capitol Building, 119 D Street, NE, Washington, DC. The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia, 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Migratory Bird Conservation Commission. Proposals require a minimum of 50 percent non-Federal matching funds.

Dated: February 25, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–5028 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Conservation Strategy for the Grizzly Bear in the Yellowstone Ecosystem

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service), announces the availability for public review of the Draft Conservation Strategy for the grizzly bear *(Ursus arctos horribilis)* in the Yellowstone Ecosystem. The Conservation Strategy is the management plan for the grizzly in the Yellowstone ecosystem that will be used when the population is recovered and delisted. Completion of the Conservation Strategy is a task in the Grizzly Bear Recovery Plan. We solicit review and comment from the public on this draft information.

DATES: Comments on the draft supplemental information must be received on or before May 31, 2000 to ensure that they will be received in time for our consideration prior to finalization of the document.

ADDRESSES: Persons wishing to review the Draft Conservation Strategy may obtain a copy by contacting the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812. The document also is available for viewing and downloading at: <http://www.r6.fws.gov/endspp/grizzly/>. Written comments and materials regarding this information should be sent to the Recovery Coordinator at the address given above, or can be mailed electronically to <FW6__grizzly@fws.gov>. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the our endangered species program. Recovery plans guide the recovery efforts for listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

Under the provisions of the Endangered Species Act of 1973 (Act) as amended (16 U.S.C. 1531 *et seq.*), we approved the revised Grizzly Bear Recovery Plan on September 10, 1993.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1995 (40 FR 31734). Threats to grizzly bear populations come primarily from habitat modification caused by human activities and from direct bear/human conflicts resulting from recreational and resource use activities, highway and railroad corridors, illegal mortality, etc. The grizzly bear population in each of the ecosystems included in the Plan can be delisted independently once recovery criteria stated in the Plan are met.

The Plan provides that prior to delisting of the grizzly bear population in each ecosystem a conservation strategy will be developed and implemented that outlines all habitat and regulatory mechanisms that will be in force after recovery of that population.

The Yellowstone Ecosystem Draft Conservation Strategy is now available for review and comment.

Public Comments Solicited

We solicit written comments on the supplemental information described above. All comments received by the date specified in the **DATES** section above will be considered prior to finalization of the strategy.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 15, 2000.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado

[FR Doc. 00–5073 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a tour and meeting of the Arizona Resource Advisory Council (RAC). A pre-tour briefing will be conducted on March 30, 2000 from 8–10 a.m. at the BLM Safford Field Office located at 711 14th Avenue, Safford, Arizona. BLM staff will provide a review of the Standards for Rangeland Health and Guidelines for Grazing Administration (S&Gs) and the implementation process. After this two-hour briefing, BLM staff and RAC will

tour a BLM grazing allotment called Johnny Creek near Safford. The tour objectives are to provide the RAC with field training on resource evaluation and on-the-ground S&G application. The business meeting will be held on March 31 at the Ramada Inn located at 420 E. Highway 70 in Safford, Arizona. It will begin at 9 a.m. and will conclude at approximately 4 p.m. The agenda items to be covered include the review of the January 21, 2000, meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Emerging Recreation Issues on Public Land; Wild Horse and Burro National Strategy Update; Growing Smarter in Arizona Initiative Presentation; Discussion on New Monument Designation Process; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on March 31, 2000, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Denise P. Meridith,

Arizona State Director.

[FR Doc. 00–5007 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY National Park Service; Interior.

ACTION Notice of Boundary Revision, Indiana Dunes National Lakeshore, Indiana.

SUMMARY: This notice announces a revision of the boundaries of Indiana Dunes National Lakeshore, Indiana, to include within the boundaries fifteen (15) parcels of land.

FOR FURTHER INFORMATION CONTACT: Superintendent, Indiana Dunes National Lakeshore, 1100 N. Mineral Springs Road, Porter, Indiana 46304, or by telephone 219–938–7561.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of Indiana Dunes National Lakeshore are revised. This revision is effective upon publication of this notice, to include certain parcels of real property situated in the Counties of LaPorte and Porter, State of Indiana. These parcels have been donated to the United States and they are contiguous to the National Lakeshore boundaries. These parcels contain 0.36 of an acre more or less in LaPorte County, and 31.67 acres more or less in Porter County.

The parcels are identified as follows:

LaPorte County:
Tract 98–108 on Segment Map 98 Drawing No. 626/35,098.
Porter County:
Tract 09–113 on Segment Map 09 Drawing No. 626/35,009.
Tracts 22–106 and 22–107 on Segment Map 22 Drawing No. 626/35,022.
Tract 35–118 on Segment Map 35 Drawing No. 626/35,035.
Tract 41–103 on Segment Map 41 Drawing No. 626/35,041.
Tract 72–110 on Segment Map 72 Drawing No. 626/35,072.
Tracts 99–134, 99–135, 99–136, and 99–137, on Segment Map 99 Drawing No. 626/35,099.
Tracts 101–11, 101–12, 101–13, and 101–14, on Segment Map 101 Drawing No. 626/35,101.

All of the above-cited Segment Maps are dated January 3, 2000. These maps and related detailed information are on file at the National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102–2571.

Dated: January 20, 2000.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 00–5004 Filed 3–1–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: March 3, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436; Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–393 and 731–TA–829–830, 833–834, 836, and 838 (Final) (Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 13, 2000.)
5. Outstanding action jackets:
   (1.) Document No. (E)GC–00–001: Administrative matters.

In accordance with Commission policy, subject matter listed above not disposed of at the scheduled meeting may be carried over to the agenda of the following meeting.

Issued: February 25, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5171 Filed 2–29–00; 2:25 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: March 3, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436; Telephone: (202) 205–2000.

STATUS: Closed to the public.

AGENDA ITEM TO BE CLOSED:

#5: Outstanding action jackets:
(1.) Document No. (E)GC–00–001: Administrative matters.

Pursuant to 5 U.S.C. 552b(c) and Commission rule 19 C.F.R. § 201.36(b), the Commission has unanimously determined to close a portion of the meeting of Friday, March 3, 2000, to public observation, in order to avoid disclosure of information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy. The General Counsel has certified that a portion of the meeting is being properly closed to the public by the Commission. Persons permitted to attend this closed portion of the meeting include Commissioners, their staff, and other Commission personnel who need to be available for the discussion or to conduct the meeting.

Issued: February 28, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–5172 Filed 2–29–00; 2:25 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that on February 7, 2000, a proposed consent decree in *United States* v. *Ashland, Inc., et al.*, Civil Action No. 3:00 CV 252 (AVC), was lodged with the United States District Court for the District of Connecticut. This proposed

consent decree resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency (''EPA'') against thirty potentially responsible parties relating to certain response costs that have been or will be incurred at or from a Site known as the Gallup's Quarry Superfund Site (''Site'') located in the Town of Plainfield, Connecticut, and the performance of the remedial action at the Site.

The Consent Decree requires the defendants to fund and perform the selected remedy, specifically natural attenuation of contaminants in the soil and groundwater, a long-term sampling and analysis program, implementation of institutional controls to restrict the site use, five year site reviews to assure that the remedy continues to protect human health and the environment, and to pay certain of the United States' future costs at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ashland, Inc., et al.*, D.J. Ref. 90–11–2–934A.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Connecticut, 450 Main Street, Hartford, Ct., 06103; and at the Region I Office of the Environmental protection Agency, One Congress Street, Boston, MA., 021114–2023. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy please refer to the referenced case and enclosed a check made payable to the Consent Decree Library in the amount of $26.00 (there is a 25 cent per page reproduction costs).

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–4971 Filed 3–1–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, Clean Water Act and Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *California Office of State Printing,* Civil No. CS–00–294–DFL/PAN was lodged on February 11, 2000, with the United States District Court for Eastern District of California.

The consent decree settles claims for civil penalties and injunctive relief against the California Office of State Printing (''OSP'') under the Clean Air Act, Clean Water Act and the Resource Conservation and Recovery Act and regulations promulgated thereunder. The complaint sought injunctive relief and civil penalties against OSP pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b); Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319 (b) and (d); and Sections 3008(a) and (g) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6928(a) and (g), for violations of the Clean Air Act, Clean Water Act, and RCRA and the regulations promulgated thereunder, including the Sacramento Metropolitan Air Quality Management District (''SMAQMD'') Rules 201 (formerly numbered as Rule 50), 202, 441, and 450 and title 22 of the California Code of Regulations, Sections 66262.10 to 66262.70. The violations occurred at the State Printing facility located at 344 North 7th Street, Sacramento, California.

Pursuant to the consent decree, OSP will pay a civil penalty of $320,500 and will operate under interim emission limits set forth in the consent decree until OSP's application for permits from the SMAQMD has been resolved. OSP will also certify that it is in compliance with the provisions of the Clean Water Act and the Resource Conservation and Recovery Act that it violated.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *California Office of State Printing,* DOJ Ref. # 90–7–1–900.

The proposed consent decree may be examined at the office of the United States Attorney, for the Eastern District of California, 650 Capitol Mall, Sacramento, CA 95814 (916) 554–2766; and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–4972 Filed 3–1–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 194–2000]

Privacy Act; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify a system of records. Specifically, the ''National Institute of Corrections Technical Assistance Resource Persons Directory, JUSTICE/BOP–101'' (last published on April 18, 1983, (48 FR 16556,)) has been re-titled, the ''National Institute of Corrections Technical Resource Provider Record System, JUSTICE/BOP–101.''

This system, which will become effective 60 days from the date of publication, has been revised to include an expanded group of individuals who provide training and technical assistance to correctional agencies through the National Institute of Corrections (NIC). These individuals are now referred to as Technical Resource Providers (TRPs). The system is being re-titled to reflect this new term.

The Bureau is further modifying the system to add a statement on the purpose of this system and to add new categories of records and new record source categories. Appropriate sections have been revised to reflect technological advances and new agency practices regarding the storage, retrieval, access, retention and disposal of records in the system. The system manager has been re-designated from the Technical Assistance Manager to the Director, National Institute of Corrections.

The Routine Use section has been re-organized to group similar Routine Uses together. Two new Routine Uses have been added to allow for disclosure to law enforcement officials for law enforcement purposes and to employees and/or contractors of the National

Archives and Records Administration and the General Services Administration for records management inspections pursuant to 44 U.S.C. 2904 and 2906.

The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

A description of the modified system of records is provided below. In addition, in accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: February 14, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/BOP–101

SYSTEM NAME

National Institute of Corrections Technical Resource Provider Record System.

SYSTEM LOCATION

Records may be retained at the National Institute of Corrections (NIC) headquarters in Washington, DC or in NIC field Offices, *e.g.*, the NIC Academy campus currently located in Longmont, Colorado.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Individuals who have been identified and have agreed to provide technical and/or training assistance to state, local, tribal, foreign and international correctional agencies in order to strengthen and improve the practice of corrections. These individuals are referred to as Technical Resource Providers (TRPs).

CATEGORIES OF RECORDS IN THE SYSTEM

Records in this system include: (1) Identification and/or logistical information for each TRPs, including name, mailing address and telephone numbers; (2) resume and/or biographical information of each TRP, including educational and work experience; (3) program information concerning the subject area of expertise and descriptive comments provided by each TRP; and (4) records generated by the system listing TRPs *i.e.* database printouts which include information enumerated in (1), (2), and (3) above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

This system is established and maintained under the authority of 18 U.S.C. 4352.

PURPOSE(S)

Recent technological developments are making it possible for the National Institute of Corrections (NIC) to consolidate and automate its directory of individuals available to provide technical and/or training assistance to corrections agencies. These individuals are currently called Technical Resource Providers (TRPs) and the information about each TRP that is contained in this system assists NIC in identifying appropriate TRPs to staff corrections seminars and provide technical assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

RELEVANT DATA FROM THIS SYSTEM WILL BE DISCLOSED AS FOLLOWS:

(a) To federal agencies, and/or state, local, tribal, foreign and international government agencies that have a need for the information in the performance of their official duties.

(b) To individuals, groups or private correction companies who request technical assistance and/or training in corrections.

(c) To officials and/or contractors of federal, state, local, tribal, foreign and international law enforcement agencies for law enforcement purposes such as investigations, possible criminal prosecutions, civil court actions, and/or regulatory proceedings.

(d) to employees and/or contractors of the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE

Information maintained in the system is stored in hard copy and/or electronic media in NIC facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, magnetic tapes and/or optical disks. Documentary records are maintained in manual file folders and/or index cards.

RETRIEVABILITY

Records are retrievable by identification/logistical information, *e.g.* name and address of TRP, and/or by the subject area of expertise.

SAFEGUARDS

Information is safeguarded in accordance with Department of Justice and Bureau of Prisons rules and policy governing automated information systems security and access. These safeguard include the maintenance of records and technical equipment in restricted areas, *e.g.* locked offices and locked file cabinets in controlled-access buildings, and the required use of proper passwords and user identification codes to access the system. Only those NIC personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL

Electronic records generated by the system are retained until such time as the records no longer serve the purpose described by this system. At such time, these records may be updated and/or incorporated into an appropriate, published system or records with an approved retention schedule, or otherwise destroyed by shredding and/or degaussing. Documentary records are retained for eight (8) years and then destroyed by shredding.

SYSTEM MANGER(S) AND ADDRESS

Director, National Institute of Corrections, Room 5007, 320 First St. NW, Washington, DC 20534.

NOTIFICATION PROCEDURE

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES

All requests for records may be made in writing to the Director, National Institute of Corrections, Room 5007, 320 First St. NW, Washington, DC 20534, and should be clearly marked ''Privacy Act Request.''

CONTESTING RECORD PROCEDURES

Same as above.

RECORD SOURCE CATEGORIES

Records are generated by individuals listed as a TRP, by NIC staff, and/or staff from other correctional and/or other law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

[FR Doc. 00–4973 Filed 3–1–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–98]

NSF International, Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of NSF International (NSF) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than May 1, 2000.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that NSF International (NSF) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). NSF's expansion request covers the use of additional test standards.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products ''properly certified'' by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of the preliminary finding on an application.

The most recent notices published by OSHA for the NSF recognition covered its initial recognition, which OSHA announced on August 8, 1998 (63 FR 46082) and granted on December 10, 1998 (63 FR 68309).

The current address of the NSF facility (site) recognized by OSHA is: NSF International, 789 Dixboro, Ann Arbor, Michigan 48105.

General Background on the Application

NSF has submitted a request, dated December 17, 1998 (see Exhibit 6A), to expand its recognition as an NRTL for six (6) additional test standards. Also, NSF has submitted a similar request, dated March 1, 1999 (see Exhibit 6B), for four (4) other test standards. OSHA has determined that two of the standards listed in the December 17 request are not ''appropriate test standards,'' as specified in 29 CFR 1910.7(c). Therefore, the expansion will only cover the eight (8) test standards listed below. OSHA temporarily withheld its consideration of NSF's requests pending notification by the NRTL of the certification of its first products under the NRTL Program. The Agency imposed a condition requiring such a notification when it recognized NSF. However, NSF recently informed the NRTL Program staff that it has not performed this certification. NSF would appear to have less opportunity to do so without this expansion, and the NRTL Program office has decided to proceed with granting NSF's requests. OSHA will continue to impose the condition for notification, which we state again in this notice.

NSF seeks recognition for testing and certification of products to demonstrate compliance to the eight (8) test standards listed below, and OSHA has determined the standards are appropriate, as prescribed by 29 CFR 1910.7(c). OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, the Agency's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

ANSI/UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances

ANSI/UL 621 Ice Cream Makers

ANSI/UL 651 Schedule 40 and 80 PVC Conduit

ANSI/UL 651A Type EB and A Rigid PVC Conduit and HDPE Conduit

ANSI/UL 749 Household [Electric] Dishwashers

UL 763 Motor-Operated Commercial Food Preparing Machines

ANSI/UL 1081 [Electric] Swimming Pool Pumps, Filters, and Chlorinators

UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Condition

As previously mentioned, OSHA included a condition in the **Federal Register** notice for the recognition of NSF, published on December 10, 1998 (63 FR 68309). The condition currently applies to NSF and will continue to apply as part of the expansion. The condition is as follows:

Within 30 days of certifying its first products under the NRTL Program, NSF will notify the OSHA NRTL Program Director so that OSHA may review NSF's implementation of procedures for testing and follow-up inspections of products covered within the scope of the above-listed test standards.

Preliminary Finding on the Application

NSF has submitted acceptable requests for expansion of its recognition as an NRTL. In processing these requests, OSHA did not perform an on-site review of NSF's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and, in a memo dated October 21, 1999 (see Exhibit 7), recommended the expansion of NSF's recognition to include the additional test standards listed above.

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant, to the NSF facility listed above, the expansion of recognition to use the additional eight (8) test standards, with the condition to be applied as noted. The staff therefore recommended to the Assistant Secretary that the applications be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the NSF International facility listed above can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the

expansion of recognition, subject to the above condition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether NSF has met the requirements of 29 CFR 1910.7 for the expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESSES**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of NSF requests, the memo on the recommendation, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–2–98, the permanent record of public information on the NSF recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant the NSF expansion requests. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, D.C. this 10th day of February, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–4965 Filed 3–1–00; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–92]

TUV Rheinland of North America, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of TUV Rheinland of North America, Inc., (TUV) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than May 1, 2000.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that TUV Rheinland of North America, Inc., (TUV) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUV's expansion request covers the use of additional test standards.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products ''properly certified'' by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of the preliminary finding on an application.

The most recent notices published by OSHA for the TUV recognition covered an expansion of recognition, which OSHA announced on January 8, 1998 (63 FR 1127) and granted on April 2, 1998 (63 FR 16280).

The current address of the TUV facility (site) recognized by OSHA is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

General Background on the Application

TUV has submitted a request, dated May 5, 1999 (see Exhibit 19A), to expand its recognition as an NRTL for one hundred forty (140) additional test standards. TUV also submitted information in support of its request with a letter, dated July 6, 1999 (see Exhibit 19B). OSHA has determined that twenty-one (21) of the standards that TUV requested are not ''appropriate test standards,'' as specified in 29 CFR 1910.7(c). Therefore, the expansion will only cover the one hundred-nineteen (119) test standards listed below.

The NRTL has submitted documentation that shows its general capability for testing to the standards for which it seeks recognition. The testing capabilities required under these standards are very similar to those standards for which it is already recognized. TUV will develop more specific documentation for testing to the standards requested. Since the Agency has not yet reviewed these procedures, it has concerns regarding the actual procedures that TUV will develop and utilize for testing. In addition, OSHA temporarily withheld its consideration of TUV's expansion request due to discrepancies noted during a review of TUV's site. TUV has presented documentation to OSHA to address the issues raised by the review. Although OSHA has decided to proceed with this preliminary finding on the expansion request, the Agency is concerned that the NRTL's resolution to the issues will take some time to implement. Due to these concerns, OSHA plans to conditionally recognize TUV for the additional standards.

TUV seeks recognition for testing and certification of products to demonstrate compliance to the 119 test standards listed below, and OSHA has determined the standards are appropriate, as prescribed by 29 CFR 1910.7(c). OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials (*i.e.,* products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, the Agency's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

ANSI/UL 22 Amusement and Gaming Machines
ANSI/UL 48 Electric Signs
ANSI/UL 67 Panelboards
ANSI/UL 73 Motor-Operated Appliances
ANSI/UL 82 Electric Gardening Appliances
ANSI/UL 122 Photographic Equipment
ANSI/UL 130 Electric Heating Pads
ANSI/UL 136 Pressure Cookers
ANSI/UL 141 Garment Finishing Appliances
ANSI/UL 153 Portable Electric Lamps
ANSI/UL 174 Household Electric Storage Tank Water Heaters

ANSI/UL 197 Commercial Electric Cooking Appliances
ANSI/UL 250 Household Refrigerators and Freezers
ANSI/UL 298 Portable Electric Hand Lamps
ANSI/UL 430 Waste Disposers
ANSI/UL 443 Steel Auxiliary Tanks for Oil-Burner Fuel
UL 444 Communications Cables
ANSI/UL 448 Pumps for Fire Protection Service
ANSI/UL 452 Antenna-Discharge Units
ANSI/UL 469 Musical Instruments and Accessories
ANSI/UL 471 Commercial Refrigerators and Freezers
ANSI/UL 474 Dehumidifiers
ANSI/UL 482 Portable Sun/Heat Lamps
ANSI/UL 499 Electric Heating Appliances
ANSI/UL 506 Specialty Transformers
ANSI/UL 507 Electric Fans
ANSI/UL 508 Industrial Control Equipment
ANSI/UL 508C Power Conversion Equipment
ANSI/UL 541 Refrigerated Vending Machines
ANSI/UL 561 Floor Finishing Machines
ANSI/UL 583 Electric-Battery-Powered Industrial Trucks
ANSI/UL 621 Ice Cream Makers
ANSI/UL 696 Electric Toys
ANSI/UL 697 Toy Transformers
ANSI/UL 745–1 Portable Electric Tools
ANSI/UL 745–2–1 Particular Requirements of Drills
ANSI/UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
ANSI/UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
ANSI/UL 745–2–4 Particular Requirements for Sanders
ANSI/UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
ANSI/UL 745–2–6 Particular Requirements for Hammers
ANSI/UL 745–2–8 Particular Requirements for Shears and Nibblers
ANSI/UL 745–2–9 Particular Requirements for Tappers
ANSI/UL 745–2–11 Particular Requirements for Reciprocating Saws
ANSI/UL 745–2–12 Particular Requirements for Concrete Vibrators
ANSI/UL 745–2–14 Particular Requirements for Planers
ANSI/UL 745–2–17 Particular Requirements for Routers and Trimmers
ANSI/UL 745–2–30 Particular Requirements for Staplers
ANSI/UL 745–2–31 Particular Requirements for Diamond Core Drills
ANSI/UL 745–2–32 Particular Requirements for Magnetic Drill Presses
ANSI/UL 745–2–33 Particular Requirements for Portable Bandsaws
ANSI/UL 745–2–34 Particular Requirements for Strapping Tools
ANSI/UL 745–2–35 Particular Requirements for Drain Cleaners
ANSI/UL 745–2–36 Particular Requirements for Hand Motor Tools
ANSI/UL 745–2–37 Particular Requirements for Plate Jointers
ANSI/UL 749 Household Dishwashers
ANSI/UL 751 Vending Machines
UL 763 Motor-Operated Commercial Food Preparing Machines
UL 775 Graphic Arts Equipment
ANSI/UL 778 Motor Operated Water Pumps
ANSI/UL 826 Household Electric Clocks
ANSI/UL 858 Household Electric Ranges
ANSI/UL 859 Household Electric Personal Grooming Appliance
ANSI/UL 867 Electrostatic Air Cleaners
ANSI/UL 875 Electric Dry Bath Heaters
ANSI/UL 921 Commercial Electric Dishwashers
ANSI/UL 923 Microwave Cooking Appliances
ANSI/UL 935 Fluorescent-Lamp Ballasts
ANSI/UL 961 Electric Hobby and Sports Equipment
ANSI/UL 982 Motor-Operated Household Food Preparing Machines
ANSI/UL 984 Hermetic Refrigerant Motor-Compressors
ANSI/UL 987 Stationary and Fixed Electric Tools
ANSI/UL 1004 Electric Motors
ANSI/UL 1005 Electric Flatirons
ANSI/UL 1012 Power Units Other than Class Two
ANSI/UL 1017 Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018 Electric Aquarium Equipment
ANSI/UL 1026 Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028 Hair Clipping and Shaving Appliances
ANSI/UL 1042 Electric Baseboard Heating Equipment
ANSI/UL 1081 Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083 Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1230 Amateur Movie Lights
ANSI/UL 1236 Battery Chargers for Charging Engine-Starter Batteries
UL 1240 Electric Commercial Clothes-Drying Equipment
ANSI/UL 1278 Movable and Wall-or Ceiling-Hung Electric Room Heaters
ANSI/UL 1310 Class 2 Power Units
ANSI/UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
ANSI/UL 1419 Professional Video and Audio Equipment
ANSI/UL 1431 Personal Hygiene and Health Care Appliances
ANSI/UL 1445 Electric Water Bed Heaters
ANSI/UL 1459 Telephone Equipment
ANSI/UL 1559 Insect-Control Equipment, Electrocution Type
ANSI/UL 1561 Dry Type General Purpose and Power Transformers
ANSI/UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
ANSI/UL 1564 Industrial Battery Chargers
ANSI/UL 1570 Fluorescent Lighting Fixtures
ANSI/UL 1571 Incandescent Lighting Fixtures
ANSI/UL 1572 High Intensity Discharge Lighting Fixtures
ANSI/UL 1573 Stage and Studio Lighting Units
ANSI/UL 1574 Track Lighting Systems
ANSI/UL 1585 Class 2 and Class 3 Transformers
UL 1594 Sewing and Cutting Machines
ANSI/UL 1647 Motor-Operated Massage and Exercise Machines
ANSI/UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
ANSI/UL 1727 Commercial Electric Personal Grooming Appliances
ANSI/UL 1776 High-Pressure Cleaning Machines
ANSI/UL 1786 Nightlights
UL 1795 Hydromassage Bathtubs
UL 1838 Low Voltage Landscape Lighting Systems
ANSI/UL 1995 Heating and Cooling Equipment
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–8 Automatic Electrical Controls for Household and Similar

Use; Part 2: Particular Requirements for Electrically Operated Water Valves

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Conditions

As indicated above, OSHA has concerns regarding the additional documentation and procedures that TUV will develop and utilize in testing products to the standards for which the NRTL seeks recognition. Also, the Agency is concerned about TUV's actual implementation of the resolution to the discrepancy noted during an on-site review of TUV's Newtown site. As a result, OSHA plans to recognize TUV subject to a later assessment of the relevant documentation and procedures.

TUV has general ''procedures'' that it can adapt for each specific test standard covered by this notice, but it must have specific testing procedures for a test standard in-place before it undertakes any testing, and therefore before any certification, of products covered by the particular test standard. If these procedures are not in place, TUV would not meet the requirements for continued recognition of the particular test standard(s). As a result, OSHA plans to impose a condition on granting the expansion to ensure that TUV does develop and implement appropriate written procedures for testing to the test standards covered in this notice. During future on-site visits of the NRTL, the NRTL Program staff would audit for compliance to the condition. The Agency would commence the process to revoke recognition for any test standards for which TUV does not meet the condition.

Similarly, OSHA wants assurance that TUV will properly implement its resolution to the discrepancy already mentioned. The Agency does not reveal the specific findings of its on-site reviews because they often contain specific details that may be confidential or privileged to the NRTL. For purposes of this notice, OSHA proposes the condition in terms that the Agency believes are fair to the NRTL and provide appropriate information to the public.

The conditions that OSHA plans to impose are as follows:

a. TUV must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and must use these procedures in testing and certifying those products.

b. TUV must restrict the administration, certification, and qualification activities that it performs in its capacity as an NRTL only to its Newtown facility. TUV must perform these activities in accordance with OSHA's relevant policies and criteria for these activities, and in accordance with its response, to the applicable on-site review, that OSHA has accepted.

Preliminary Finding on the Application

TUV has submitted an acceptable request for expansion of its recognition as an NRTL. In processing this request, OSHA performed an on-site assessment (review) of TUV's facility in Newtown, Connecticut, on July 12–14, 1999. TUV has addressed the discrepancies noted by the assessor during the on-site review, following the on-site evaluation. The resolution to the discrepancies are factored into the on-site review report (see Exhibit 20).

Following a review of the application file, the on-site review report, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to the TUV facility listed above the expansion of recognition to use the additional one hundred-nineteen (19) test standards, with the conditions to be applied as noted. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the TUV Rheinland of North America, Inc., facility listed above can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition, subject to the above conditions. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, on whether TUV has met the requirements of 29 CFR 1910.7 for the expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of the TUV request, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–3–92, the permanent record of public information on the TUV recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant the TUV expansion request. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, D.C. this 10th day of February, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–4966 Filed 3–1–00; 8:45 am]

BILLING CODE 4510–26–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4),

and (6) of section 552b of Title 5, United States Code.

1. *Date:* March 10, 2000
Time: 9:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline

2. *Date:* March 13, 2000
Time: 9:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline

3. *Date:* March 17, 2000
Time: 9 a.m. to 5:10 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline

4. *Date:* March 20, 2000
Time: 9 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2000 deadline

5. *Date:* March 23, 2000
Time: 9 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Special Projects, submitted to the Division of Public Programs at the February 1, 2000 deadline

6. *Date:* March 24, 2000
Time: 9 a.m. to 5:30 p.m.
Room: 730
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline

7. *Date:* March 31, 2000
Time: 9 a.m. to 5:30 p.m.
Room: 426
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2000 deadline

8. *Date:* March 31, 2000
Time: 9 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline

Dated:

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 00–4968 Filed 3–1–00; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to the Tennessee Valley Authority (TVA, the licensee), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

The proposed amendment would add a footnote to Technical Specification (TS) Table 3.3.2–1 (page 3 of 7) that deletes applicability of Surveillance Requirement (SR) 3.3.2.10, ''Turbine Trip and Feedwater Isolation,'' for the period February 23, 2000, until restart of the main turbine following the next time the turbine is removed from service.

TVA submitted an exigent license amendment request on February 25, 2000, as described above, to amend the WBN TS on a one-time basis to alleviate an inadvertent noncompliance resulting from a component replacement. Specifically, WBN entered TS 3.0.3 on February 22, 2000, as the result of a determination that response time testing (RTT) had not been performed for the Train B turbine trip solenoid valve (1–FSV–47–027–B) following replacement during WBN's Unit 1 Cycle 2 Refueling Outage during the Spring of 1999. The subject surveillance test (SR 3.3.2.10) had been performed within the required frequency of once every 36 months. However, the last test was partially invalidated by replacement of the subject solenoid valve because response time data on the valve was not obtained following installation of the new valve. The plant must be in a shutdown condition to obtain this data. Therefore, TS relief was sought by TVA to avoid an unnecessary plant shutdown for the sole purpose of obtaining this response time data. The response time data will be obtained during the next occasion involving removal of the main turbine from service.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(A) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested discretionary enforcement will not result in a significant increase in the consequences of an accident as the turbine trips have been functionally verified in accordance with the technical specifications and the turbine protection program and turbine trip response time is not a significant contributor to the accident analysis. Accordingly, there would be no impact on projected offsite doses.

(B) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the safety function of the solenoid valve was confirmed during the post maintenance testing. Further, during the functional testing the control room operator observed normal operation of the trip function. Although the response time was not quantitatively determined for the end device, this deficiency cannot create a new or different accident from any previously evaluated.

(C) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Again as discussed above, the trip function was confirmed by post maintenance testing, and the operator did not observe any abnormal delay in response. This clearly indicates there would be no significant reduction in a margin of safety associated with the lack of quantitative documentation of the response time for a portion of the Steam Generator Water Level High High turbine trip function.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently. Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 15, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, 400 West Summit Drive, ET 10H, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley

Authority, 400 West Summit Drive, ET 10H, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to General Counsel, Tennessee Valley Authority, 400 West Summit Drive, ET 10H Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 25, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 25th day of February 2000.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5017 Filed 3–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–1014]

Holtec International; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Request for Exemption From Requirements of 10 CFR Part 72; Correction

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 19, 2000 (65 FR 2995). This action is necessary to correct an erroneous Unit number.

FOR FURTHER INFORMATION CONTACT: Thomas Matula, Office of Nuclear Material Safety and Safeguards, Washington, D.C. 20555–0001, telephone 301–415–8563, e-mail tom1@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 2995, in the center column, in the last sentence, ''Units 2 and 3'' is corrected to read ''Unit 1''.

Dated at Rockville, Maryland, this 23rd day of February 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–5018 Filed 3–1–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

[Extension: Rule 30b2–1; SEC File No. 270–213; OMB Control No. 3235–0220]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''Act'') [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 30b2–1 Under the Investment Company Act of 1940, Filing of Copies of Reports to Stockholders

Rule 30b2–1 under the Investment Company Act of 1940 [17 CFR 270.30b2–1] requires the filing of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its stockholders.[1] This requirement ensures that the Commission has information in its files to perform its regulatory functions and to apprise investors of the operational and financial condition of registered investment companies.[2]

It is estimated that approximately 3,490 registered management investment companies are required to send reports to stockholders at least twice annually. The annual burden of filing the reports is estimated to be negligible.

The burden estimate for Rule 30b2–1 is made solely for the purposes of the Act and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C., 20549.

Dated: February 23, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4980 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–M

[1] Most filings are made via the Commission's electronic filing system; therefore, paper filings under Rule 30b2–1 occur only in exceptional circumstances. Electronic filing eliminates the need for multiple copies of filings.

[2] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and stockholders.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24314; 812–11904]

Harris & Harris Group, Inc.; Notice of Application

February 24, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Issuance of Certification Pursuant to Section 851(e) of the Internal Revenue Code of 1986, as amended (''Code'').

SUMMARY: The SEC is issuing a certification pursuant to section 851(e) of the Code that applicant Harris & Harris Group, Inc. (''Harris'') was, for the fiscal year ended December 31, 1999, principally engaged in the furnishing of capital to other corporations which are principally

engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available.

FILING DATES: The application was filed on December 22, 1999, and amended on February 24, 2000.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609; Applicant, One Rockefeller Plaza, 14 Wast 49th Street, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Paula L. Kashtan, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application and a certification. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. Harris is a New York corporation. On July 26, 1995, Harris elected to become regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940.

2. Harris proposed to qualify as a ''regulated investment company'' under section 851(a) of the Code pursuant to section 851(e) of the Code. Section 851(b) of the Code imposes certain portfolio diversification requirements on investment companies that seek to qualify as a regulated investment company. Section 851(e) of the Code provides an exemption from these diversification requirements if the investment company, among other things, obtains a certification from the SEC that the investment company is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available (collectively, ''Development Corporations'').

3. Harris has filed an application seeking a certification pursuant to section 851(e) of the Code for the fiscal year ended December 31, 1999. The application describes certain companies in Harris' portfolio during the fiscal year ended December 31, 1999, that Harris believes to be Development Corporations. Harris states that, in making this determination, it relied upon information provided by the portfolio companies to Harris and to others, including but not limited to, offering circulars, prospectuses, analyst reports, internal company memoranda, patent applications and similar documents. In addition, Harris generally is represented on the boards of directors of its portfolio companies through member or observe status, and also has direct access to senior management of the companies.

4. The following table shows the composition of the total assets of Harris as of each of the calendar quarters ended March 31, June 30, September 30, and December 31, 1999, as set forth in the application.

Assets (at value)	Mar. 31, 1999	June 30, 1999	Sept. 30, 1999	Dec. 31, 1999
Investments representing capital furnished to corporations believed to be Development Corporations	$14,947,426	$18,845,689	$20,952,249	$59,806,703
Other investments, cash and U.S. Government securities	10,540,419	9,007,741	6,897,452	4,945,693
Other Assets	646,226	1,328,451	546,593	568,372
Total Assets	26,134,071	29,181,881	28,396,294	65,320,768

As reflected in the table above, Development Companies comprised the following percentages of the total assets of Harris at the end of each calendar quarter of 1999; March 31, 57.2%; June 30, 64.6%; September 30, 73.8%; and December 31, 91.6%.

Certification

On the basis of the information set forth in the application, it appears that Harris was principally engaged in the furnishing of capital to Development Corporations within the meaning of section 851(e) of the Code in the fiscal year ended December 31, 1999. IT IS THEREFORE CERTIFIED to the Secretary of the Treasury, or his delegate, pursuant to section 851(e) of the Code, that Harris was, for the twelve months ended December 31, 1999, principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–4981 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42449; File No. SR–CHX–99–14]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to ''Stop'' and ''Stop Limit'' Orders

February 22, 2000.

On August 28, 1999, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to add Article XX, Rule 28A to the Exchange's Rules relating to ''stop'' and ''stop limit'' orders to clarify that the existing Rule 28 of Article XX relates solely to ''stopped'' orders. Notice of the proposed rule change was published on October 7, 1999, in the **Federal Register**, to solicit comment from interested persons.[3] On February 7, 2000, the Exchange withdrew the proposed rule change.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5061 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] Securities Exchange Act Release No. 41969 (September 30, 1999), 64 FR 54702.

[4] *See* letter from Kathleen Boege, Associate General Counsel, CHX, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated, February 7, 2000.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42454; File No. SR–CHX–00–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Amend its Rules Relating to the Filing of FOCUS Reports

February 24, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2000, the Chicago Stock Exchange, Inc. (the ''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 16, 2000, the Exchange filed with the Commission Amendment No. 1, designating the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to accelerate the operative date of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to codify the CHX requirement that certain financial and operational reports be filed with the Exchange electronically, utilizing software provided by the Exchange for this purpose. Specifically, the CHX proposed to add Interpretation and Policy .03 to Article XI, Rule 4 of the Exchange's rules. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's rules currently require members and member organizations to file with the Exchange, or to arrange for the timely submission to their designated examining authority (''DEA''), financial and operational reports (''FOCUS'' Reports'') pursuant to the provisions of Article XI, Rule 3 of the CHX Rules.[4]

In 1999, the Exchange licensed software, and provided it to those CHX members for which the CHX acts as the DEA to permit these members to file their monthly and quarterly FOCUS Reports electronically. Specifically, the Exchange licensed the use of the WINJAMMER™ software developed by the Chicago Mercantile Exchange. Members install the software on a personal computer and enter the required FOCUS Report information. Members then send this information to the Exchange as a password-protected attachment to an e-mail message. The program contains an additional encryption tool to allow the Exchange to verify the authenticity of the sender. The Exchange believes that these precautions provide adequate protection to Exchange members in their filing of FOCUS Reports.[5]

Because these electronically-filed reports are much easier to file and maintain, most member firms immediately chose to file their FOCUS Reports electronically.[6] The CHX is proposing this rule change to require that FOCUS Reports be filed electronically by all members for which the CHX acts as the DEA, to take advantage of the increased efficiency and the decreased errors associated with electronic filing. The proposed rule change would require the electronic filing of FOCUS beginning with the January 2000 FOCUS Reports, which are due on or before February 24, 2000. The Exchange represents that all members affected by this change have been notified that electronic filing of FOCUS Reports will be required.[7] Because the Exchange has provided affected members with the necessary software and systems support to commence electronic filing, the Exchange believes that no affected member or member organization will sustain any burden as a result of this requirement. To the contrary, the Exchange believes that electronic filing of FOCUS Reports constitutes a long-awaited convenience.

2. Statutory Basis

For these reasons, the Exchange believes the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the Exchange believes that that the proposed rule is consistent with Section 6(b)(5) of the Act/[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, the protect investors and the public interest.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange has represented that the proposed rule change: (i) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on the competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Commission is waiving the five business day notice requirement as permitted by Rule 19b–4(f)(6) under the Act. *Id.* The Commission notes that the Exchange has requested that the Commission accelerate the operative date of the rule change to permit the Exchange to apply it to the January FOCUS Reports, which are due on or before February 24, 2000. Amendment No. 1 also confirmed information about security-related protections built into the software system. *See* Letter from Ellen Neely, Vice President and General Counsel, CHX, to Melinda Diller, Attorney, Division of Market Regulation (''Division''), Commission dated February 15, 2000 (''Amendment No. 1'').

[4] *See* 17 CFR 240.17a–5.

[5] *See* Amendment No. 1, *supra* note 3.

[6] The Exchange represents that for the month of December 1999, 82 members filed FOCUS Reports with the CHX. Of those 82 members, 64 (78%) filed electronically, 18 (22%) filed manually. However, CHX is no longer the DEA for 4 of those members that filed their December 1999 FOCUS Reports manually. Therefore, 14 members (17%) of the CHX would be affected by this proposed rule change. Voice Mail Message from Ellen Neely, Vice President and General Counsel, CHX, to Melinda Diller, Attorney, Division of Market Regulation, Commission, on February 14, 2000.

[7] The Exchange represented to the Commission that a memo was sent to all firms for which the CHX acts as DEA on October 22, 1999, detailing the licensing agreement for the software and stating that the Exchange was proposing to make electronic filing a requirement beginning with the January 2000 FOCUS Reports. The Exchange also represented that it subsequently reiterated the proposed change through telephone conversations the Exchange conducted with the members affected by the change and during this inspections and testing of the software. Telephone conversation between Ellen J. Neeley, Vice President and General Counsel, CHX, and Melinda R. Diller, Attorney, Division of Market Regulation, Commission, on February 17, 2000.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, (3) by its terms does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, and (4) the Commission is waiving the required written notice of intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

The Commission has determined, consistent with the protection of investors and the public interest, to make the proposed rule change operative upon filing, pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii).[14] Under Rule 19b–4(f)(6)(iii), a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.[15] The Commission believes that it is consistent with the protection of investors and the public interest to make the proposed rule change operative upon filing because: (1) Members were notified in October that the Exchange would propose that the electronic filing requirement become effective beginning with the filing of the January 2000 FOCUS Reports, (2) the Exchange provided the necessary software for electronic filing, and (3) the purpose of the electronic filing requirement is to facilitate the filing process for members.

At any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the amended proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–00–01 and should be submitted by March 23, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5062 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *Id.*

[16] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42452; File No. SR–NASD–99–41]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Opening of Day-Trading Accounts

February 23, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2000, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 1 to the proposed rule change, File No. SR–NASD–99–41, as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The NASD submitted the proposed rule change to the Commission on August 20, 1999, which was published in the **Federal Register** on September 21, 1999 (''Original Notice'').[3] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As described in the Original Notice, NASD Regulation is proposing to amend the 2300 Series of the Rules of the NASD to include new Rule 2360 and Rule 2361 regarding the opening of day-trading accounts. Below is the text of the proposed rule change, as amended. Proposed new language from Amendment No. 1 is in *italics*. Proposed deletions from the language proposed in the Original Notice is in [brackets].

Rule 2360. Approval Procedures for Day-Trading Accounts

(a) No member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer, unless, prior to opening the account, the member has furnished to the customer the risk disclosure statement set forth in Rule 2361 and has:

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41432 (September 14, 1999), 64 FR 51165.

(1) Approved the customer's account for a day-trading strategy in accordance with the procedures set forth in paragraph (b) and prepared a record setting forth the basis on which the member has approved the customer's account; or

(2) Received from the customer a written agreement that the customer does not intend to use the account for the purpose of engaging in a day-trading strategy, except that the member may not rely on such agreement if the member knows that the customer intends to use the account for the purpose of engaging in a day-trading strategy.

(b) In order to approve a customer's account for a day-trading strategy, a member shall have reasonable grounds for believing that the day-trading strategy is appropriate for the customer. In making this determination, the member shall exercise reasonable diligence to ascertain the essential facts relative to the customer, including [his or her financial situation, tax status, prior investment and trading experience, and investment objectives.]:

(1) Investment objectives:

(2) Investment and trading experience and knowledge (e.g., number of years, size, frequency and type of transactions);

(3) Financial situation, including: estimated annual income from all sources, estimated net worth (exclusive of family residence), and estimated liquid net worth (cash, securities, other);

(4) Tax status;

(5) Employment status (name of employer, self-employed or retired);

(6) Marital status; number of dependents; and;

(7) age.

(c) If a member that is promoting a day-trading strategy opens an account for a non-institutional customer in reliance on a written agreement from the customer pursuant to paragraph (a)(2) and, following the opening of the account, knows that the customer is using the account for a day-trading strategy, then the member shall be required to approve the customer's account for a day-trading strategy in accordance with paragraph (a)(1) as soon as practicable, but in no event later than 10 days following the date that such member knows that the customer is using the account for such a strategy.

(d) Any record or written statement prepared or obtained by a member pursuant to this rule shall be preserved in accordance with Rule 3110(a).

(e) For purposes of this rule, the term ''day-trading strategy'' means an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

(f) For purposes of this rule, the term ''non-institutional customer'' means a customer that does not qualify as an ''institutional account'' under Rule 3110(c)(4).

(g) A firm will not be deemed to be ''promoting a day-trading strategy'' for purposes of this Rule solely by its engaging in the following activities:

(1) Promoting efficient execution services or lower execution costs based on multiple trades;

(2) Providing general investment research or advertising the high quality or prompt availability of such general research; and

(3) Having a Web site that provides general financial information or news or that allows the multiple entry of intra-day purchases and sales of the same securities.

Rule 2361. Day-Trading Risk Disclosure Statement

(a) Except as provided in paragraph (b), no member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer unless, prior to opening the account, the member has furnished to [the] *each* customer, *individually,* in writing or electronically, the following disclosure statement:

You should consider the following points before engaging in a day-trading strategy. For purposes of this notice, a ''day-trading strategy'' means [a] *an overall trading* strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

• Day trading can be extremely risky. Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day-trading activities with retirement savings, student loans, second mortgages, emergency funds, funds set aside for purposes such as education or home ownership, or funds required to meet your living expenses.

• Be cautious of claims of large profits from day trading. You should be wary of advertisements or other statements that emphasize the potential for large profits in day trading. Day trading can also lead to large and immediate financial losses.

• Day trading requires knowledge of securities markets. Day trading requires in-depth knowledge of the securities markets and trading techniques and strategies. In attempting to profit through day trading, you must compete with professional, licensed traders employed by securities firms. You should have appropriate experience before engaging in day trading.

• Day trading requires knowledge of a firm's operations. [You should be familiar with a securities firm's business practices, including the operation of the firm's order execution systems and procedures] Under certain market conditions, you may find it difficult or impossible to liquidate a position quickly at a reasonable price. This can occur, for example, when the market for a stock suddenly drops, or if trading is halted due to recent news events or unusual trading activity. The more volatile a stock is, the greater the likelihood that problems may be encountered in executing a transaction. In addition to normal market risks, you may experience losses due to system failures.

• Day trading may result in your paying large commissions. Day trading may require you to trade your account aggressively, and you may pay commissions on each trade. The total daily commissions that you pay on your trades may add to your losses or significantly reduce your earnings.

• Day trading on margin or short selling may result in losses beyond your initial investment. When you day trade with funds borrowed from a firm or someone else, you can lose more than the funds you originally placed at risk. A decline in the value of the securities that are purchased may require you to provide additional funds to the firm to avoid the forced sale of those securities or other securities in your account. Short selling as part of your day-trading strategy also may lead to extraordinary losses, because you may have to purchase a stock at a very high price in order to cover a short position.

(b) In lieu of providing the disclosure statement specified in paragraph (a), a member that is promoting a day-trading strategy may provide to the customer, *individually*, in writing or electronically, prior to opening the account, an alternative disclosure statement, provided that:

(1) The alternative disclosure statement shall be substantially similar to the disclosure statement specified in paragraph (a); and

(2) The alternative disclosure statement shall be filed with the Association's Advertising Department (Department) for review at least 10 days prior to use (or such shorter period as the Department may allow in particular

circumstances) for approval and, if changes are recommended by the Association, shall be withheld from use until any changes specified by the Association have been made or, if expressly disapproved, until the alternative disclosure statement has been refiled for, and has received, Association approval. The member must provide with each filing the anticipated date of first use.

(c) For purposes of this rule, the term ''day-trading strategy'' shall have the meaning provided in Rule 2360(e).

(d) For purposes of this *R*[r]ule, the term ''non-institutional customer'' means a customer that does not qualify as an ''institutional account'' under Rule 3110(c)(4).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its Original Notice with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.[4] The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

To address investor protection concerns arising from day-trading activities, NASD Regulation is proposing to amend the NASD rules to include new Rules 2360 and 2361. As described in the Original Notice and Amendment No. 1 herein, the proposed rule change would require a member firm that is promoting a day-trading strategy to furnish a risk disclosure statement to a non-institutional customer prior to opening an account for the customer and either to: (1) Approve the customer's account for a day-trading strategy, or (2) obtain from the customer a written agreement that the customer does not intend to use the account for day-trading purposes. As part of the account approval process, the firm would be required to make a threshold determination that day trading is appropriate for the customer.

In April 1999, NASD Regulation issued *Special Notice to Members* 99–32 (''NTM 99–32'') to solicit comment on the proposed rules regarding approval procedures for day-trading accounts. In response to NTM 99–32, the Association received 39 comment letters. The majority of the letters generally supported NASD Regulation's efforts to address the investor protection concerns raised by individuals engaging in day-trading activities. Commenters, however, raised varied suggestions on how best to regulate day-trading activities and presented disparate views on the scope of the activities that should be covered by the rules. The proposal discussed in NTM 99–32 differed in a number of respects from the proposal subsequently filed with the Commission as the Original Notice.[5]

As indicated in the Original Notice, the Association modified the proposed day-trading rule outlined in NTM 99–32, in response to the comment letters. Many of these changes were significant, and included: limiting the application of the rule to those firms that are ''promoting a day-trading strategy,'' as compared to ''recommending an intra-day-trading strategy''; applying the rule to all non-institutional customers; requiring firms promoting a day-trading strategy to have reasonable grounds for believing that the strategy is appropriate for the customers and to exercise reasonable diligence to ascertain the essential facts relative to the customers; revising the definition of ''intra-day-trading strategy''; requiring firms promoting a day-trading strategy to deliver the risk disclosure statement to all non-institutional customers prior to opening an account for such customers; and revising the risk disclosure statement to include the additional key point that day trading generally is not appropriate for persons of limited resources and limited investment or trading experience and low risk tolerance.

In September 1999, the Commission published the Association's modified proposal, the Original Notice, in the **Federal Register**.[6] The Commission specifically solicited comments on: whether the proposal should cover existing day-trading accounts; whether the proposed definition of ''day-trading strategy'' is appropriate; whether the proposed risk disclosure statement is adequate; and whether the firms should be required to obtain a customer's acknowledgment of receipt of the risk disclosure document.

The Commission received three comment letters in response to the Original Notice. The comment letters were from the Electronic Traders Association (''ETA''), the North American Securities Administrators Association, Inc. (''NASAA''); and the Federal Regulation Committee, the Discount Brokerage Committee and Ad-hoc Committee on Technology & Regulation of the Securities Industry Association (''SIA'').[7] In addition to the specific questions for which the Commission solicited input, the commenters expressed their views on a variety of other issues. Many of the issues raised by the commenters in response to the Original Notice also were raised in the comments in response to NTM 99–32. The comments sent to the Commission are summarized by issue below.

After considering this most recent set of comments, the Association has made additional changes to the subject proposed day-trading rules. The text of the proposed rule language provided herein reflects these changes, which include: modifying the disclosure statement; revising the prescribed method for delivering the disclosure statement; describing certain activities that will not trigger application of the proposed day-trading rules; and clarifying the information-gathering requirements. In addition to describing the proposed amendments, the discussion below clarifies some issues raised by the commenters.

Issues Raised in Comment Letters

Persons Covered by Proposed Rules

As proposed in NTM 99–32, proposed Rules 2360 and 2361 would apply to new customers only. Several

[4] *See supra* note 3.

[5] *Id.*

[6] *Id.*

[7] *See* Letters from James H. Lee, President, Electronic Traders Association (''ETA''), to Jonathan G. Katz, Secretary, SEC, dated October 11, 1999; Bradley W. Skolnik, President, Indiana Securities Commissioner, North American Securities Administrators Association (''NASAA''), to Jonathan G. Katz, Secretary, SEC, dated October 12, 1999; and Lee B. Spencer, Jr., Chairman, Federal Regulation Committee, Everett Lang, Co-Chairman, Discount Brokerage Committee, Michael L. Michael, Chairman, Ad-Hoc Committee on Technology and Regulation, and Michael Anderson, Co-Chairman, Discount Brokerage Committee, Securities Industry Association (''SIA''), to Margaret H. McFarland, Deputy Secretary, SEC, dated October 22, 1999. Each of these commenters represents a group of interested parties. ETA is a trade association of on-site day-trading firms. It has approximately 15 supporting organizations, including six of the ten largest on-site daytrading firms. NASAA is an international organization of securities regulators devoted to investor protection. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. SIA brings together the shared interests of more than 740 securities firms. Its member firms are active in all U.S. and foreign markets and in all phases of corporate and public finance.

commenters to NTM 99–32, including NASAA, responded that all existing customers should be covered by day-trading rules or, at a minimum, receive a risk disclosure statement. On the other hand, several firms argued that the proposal should apply only to new customers because it would be difficult to review all existing accounts to determine which accounts should be classified as day-trading accounts. In its rule filing, the Association revised the proposal so that the day-trading rules would apply to all new accounts. The proposed day-trading rules would not apply to an existing customer, unless the customer opens a new account at a firm that is promoting a day-trading strategy.

In the Original Notice, the Commission solicited comment on whether the proposal should cover existing day-trading accounts. NASAA was the only commenter to respond to this question. NASAA continues to believe that the proposed rules should apply to both new and existing accounts. However, no new arguments were raised in support of this proposition in NASAA's letter. Accordingly, the Association continues to believe that it struck the appropriate balance in the rule filing.

Further, in response to the rule filing, NASAA argues that a requirement to deliver a disclosure statement should apply to all parties whose funds are being handled by third parties. ETA, however, is concerned with how such a requirement would apply to entities such as hedge funds. The Association believes that as a practical matter, it would be difficult (or virtually impossible) for a firm routinely to inquire as to the identity of all parties involved in such arrangements. The Association will continue to examine for abuses involving third parties trading on behalf of others, and notes that such arrangements may raise investment adviser or broker-dealer registration issues.

Definition of Day-Trading Strategy

Proposed Rule 2360, set forth in NTM 99–32, stated that an ''intra-day-trading strategy'' is ''an overall trading strategy characterized by the regular transmission by a customer of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities.'' Several commenters to NTM 99–32 suggested a broader definition, while others suggested limiting the scope of the definition. In its rule filing, NASD Regulation changed the proposed rule language to provide that a ''day-trading strategy'' is ''an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.'' The rule filing explained that the Association believes that this definition includes those instances where an individual regularly transmits one or more purchase and sale transactions in a single day. The revised proposal also amended the definition of ''day-trading strategy'' to include orders transmitted by non-electronic means, such as by telephone.

In the Original Notice, the Commission solicited comment on whether NASD Regulation's revised definition of ''day-trading strategy'' is appropriate. NASAA believes that this definition should be further revised to state that a day-trading strategy ''often involves the 'use of margin borrowing and short-selling' and that trading accounts frequently are composed of 'equities' only and contain no long-term time horizon investments.'' The Association, however, believes that the definition included in the rule filing would not benefit from the inclusion of this additional language.

Disclosure Statement

Proposed Rule 2360, set forth in NTM 99–32, stated that the account approval procedures would require the member, prior to effecting an initial day-trading transaction, to provide the disclosure statement contained in proposed Rule 2361 to the customer.[8] The disclosure statement lists several factors that a customer should consider before engaging in day trading, including that the customer should be prepared to lose all of the funds that he or she uses for day trading, and that day trading on margin may result in losses beyond the initial investment. In the rule filing, NASD Regulation revised the proposed disclosure statement to include the additional key point that day trading generally is not appropriate for persons of limited resources and limited investment or trading experience and low risk tolerance.

In the Original Notice, the Commission requested comment on whether the proposed disclosure statement is adequate. NASAA responded by stating that certain structured arrangement entered into by participants of ''day-trading strategies'' may violate laws governing investment advisers. NASAA contends that the disclosure statement should state that persons trading for others may need to register as investment advisers.[9] The purpose of the disclosure statement, however, is to highlight for customers the unique risks posed by their engaging in day trading. The Association believes that the issue of whether an individual trading for others is required to register as an adviser or a broker/dealer should not be addressed in this risk disclosure statement.

ETA supports the concept of a risk disclosure statement. ETA, however, proposes alternative language in three sections of the disclosure statement. First, ETA proposes that the Association replace the following language:

> Day trading requires knowledge of a firm's operations. You should be familiar with a securities firm's business practices, including the operations of the firm's order execution systems and procedures.

ETA proposes the following alternative language:

> Under certain market conditions, you may find it difficult or impossible to liquidate a position quickly at a reasonable price. This can occur, for example, when the market for a stock suddenly drops, or if trading is halted due to recent news events or unusual trading activity. The more volatile a stock is, the greater the likelihood that problems may be encountered in executing a transaction.
>
> In addition to normal market risk, you may experience losses due to system failures. The firm and its clearing broker rely upon sophisticated computer software and hardware to execute transactions, which are subject to failure due to a variety of factors. Among other events, you may experience losses due to: system crashes during both peak and low volume periods; the loss of orders on both SOES and SelectNet; and, delayed, conflicting and inaccurate confirmations on orders or cancellations which you initiate.

In Amendment No. 1, the Association is modifying its proposed disclosure statement based on ETA's comment. NASD Regulation is replacing the language in question with the entire first paragraph and the first sentence of the second paragraph of ETA's recommended language. NASD Regulation believes that this language is an improvement over the language proposed by the NASD.[10] NASD

[8] The firm would be permitted to develop an alternative risk disclosure statement, provided that the alternative statement was substantially similar to the mandated statement and was filed with, and approved by, the Association's Advertising/Investment Companies Regulation Department.

[9] Specifically, NASAA believes that the disclosure statement should ''include a warning that parties who trade the accounts of others, whether through trading authorizations, partnership agreements or otherwise, or who trade with funds furnished by others, whether through pooled fund arrangements or otherwise, and [sic] may be subject to the law and regulations governing investment advisers and may be required to register as investment advisers under state and federal law.''

[10] The NASD is retaining the caption heading for this paragraph: ''Day trading requires knowledge of a firm's operations.''

Regulation, however, believes the remaining language in ETA's recommended second paragraph over emphasizes the fallibility of outside systems.

ETA also proposes alternative language to two other sections of the proposed disclosure statement. ETA recommends changes to the section captioned: ''Day-trading may result in your paying large commissions.'' ETA suggests language which omits any direct reference to total daily commissions possibly adding to an individual's losses. The Association rejects this recommendation because it incorrectly assumes that there will be earnings. Finally, ETA proposes alternative language to the section of the proposed disclosure statement captioned: ''Day-trading can be extremely risky.'' In this section, ETA recommends the Association include a discussion on the difficulty in earning money during the first three to five months of day trading. The Association believes that this language may actually encourage people to continue day trading in hopes that results will improve with time and experience. There does not, however, appear to be any reliable statistical evidence that supports such an assertion.

Finally, in Amendment No. 1, the Association is making a technical revision to the definition of ''day-trading strategy.'' The change is not the product of any of the comment letters. The definition of day trading in the proposed Rule 2361 disclosure statement is being changed to conform with the definition as it appears in the text of proposed Rule 2360.

Customer Acknowledgment

The proposal, set forth in NTM 99–32, would not require customers to sign or otherwise acknowledge receipt of the disclosure statement. Commenters to NTM 99–32 expressed divergent views in response to this issue. Both ETA and NASAA expressed the view that it was appropriate to require a firm to retain a copy of the disclosure document with an acknowledgment of its receipt by the customer. Other commenters argued that the customer should not be required to sign or otherwise acknowledge receipt of the disclosure statement. For instance, E*TRADE argued that the customer's acknowledgment is unnecessary in this context because the statement is a disclosure of risks, and not an agreement between the firm and the customer. After considering the comments, NASD Regulation concluded that it is sufficient for firms to have written procedures in place for delivery of the document and to be able to identify those procedures to any examiners.

In the Original Notice, the Commission solicited comments on whether firms should be required to obtain a customer's acknowledgment of receipt of the disclosure statement. Again, NASAA and ETA expressed the view that customers should be required to acknowledge in writing that they have read and understand the statement. Lastly, NASAA suggests that a principal of the firm sign the statement. In response to these comments, in Amendment No. 1, the Association is revising proposed Rule 2361 to require firms to deliver the disclosure statement to each customer individually, by mail or electronic means, prior to opening the account. This approach would protect against a firm posting the disclosure statement in a remote place on its Web site, and claiming that it was delivered to all customers in such manner. The Association is not proposing to require customers to sign the disclosure statements. The Association believes that any abuses of the delivery requirement could be detected during routine examinations.

Individual Solicitations

As noted above, commenters raised several issues that the Commission did not specifically address in the ''Solicitation of Comments'' section of the rule filing published in the Original Notice. One of these issues is whether the proposed day-trading rule could be triggered only by firms' general promotional efforts, or whether individual solicitations could alone trigger application of the proposed rules. SIA believes that obligations under the proposed rules should not arise in situations where there are no general promotional efforts by firms. SIA argues that ''[i]ndividual solicitations are already covered by suitability and recordkeeping rules and a new rule would not add anything new to investor protection.'' This, however, is not necessarily true if firms are recommending strategies rather than specific securities. Further, SIA argues that ''[e]ven if individually targeted promotions [are] subject to the [proposed day-trading] rule, the rule does not address whether such a promotion would trigger the account opening requirements for *all* new customers of the firm.'' SIA believes that ''in the absence of general promotional efforts, an individual solicitation [should] not trigger obligations under the rule to any customers but those targeted by the promotion.'' It appears that SIA is concerned that the rule filing text could be read to mean that if one broker at a full-service firm targeted, for example, five customers for day trading without the firm's knowledge, then the firm itself would be deemed to be promoting day trading and would need to adhere to the rules for all accounts.

The Association does not believe that such individual solicitations alone would trigger application of proposed Rules 2360 and 2361. Rather, these proposed rules would only be triggered by firms' general promotional efforts or by firm-sponsored promotional efforts. However, firms may not promote day trading through individuals in an effort to circumvent the rules. In addition, if a principal or officer of the firm is aware that brokers in the firm are soliciting customers for day trading, then the firm will be deemed to be promoting day trading.

SIA also notes that the rule filing does not state how long the account review obligation continues after a firm stops promoting a day-trading strategy. Firms, however, working with counsel, if necessary, can reasonably determine whether a sufficient amount of time has passed to remove a firm from coverage of the rules. Finally, SIA seeks ''clarification that the rule[s are] not intended to apply to discretionary or managed accounts, in which brokers execute a variety of strategies that may or may not constitute day trading.'' As noted above, however, the proposed rules would apply only to those firms promoting a day-trading strategy through general or firm-sponsored promotional efforts.

Promoting Day Trading Strategy

As noted above, proposed Rules 2360 and 2361 would apply only to firms ''promoting a day-trading strategy.'' Although the proposed rule language does not define the phrase ''promoting a day-trading strategy,'' the rule filing states that none of the following actions alone would trigger the requirements under the proposed rule change: (1) The promotion by a member of efficient execution services or lower execution costs based on multiple trades; (2) providing general investment research or advertising the high quality or prompt availability of such general research; or (3) having a Web site that provides general financial information or news or that allows the multiple entry of intra-day purchases and sales of the same securities. SIA believes that the day-trading rules should include a safe harbor that codifies the above activity that NASD Regulation does not deem to be ''promoting a day-trading strategy'' for purposes of the rules. SIA recommends including a new paragraph

(g) of Rule 2360 that would state that ''[f]or purposes of this rule, the term 'promoting a day-trading strategy' shall not include [the type of activities listed in the rule filing (and above)].'' [11]

NASD Regulation believes that it would be helpful to describe actions in the text of the proposed rule language that the Association does not consider to be ''promoting a day trading strategy.'' In Amendment No. 1, NASD Regulation is modifying the proposed rule language to state that a member will not be deemed to be ''promoting a day-trading strategy'' for purposes of the rules solely by its engaging in the listed activities.

Other-Use Agreement

As an alternative to approving an account for a day-trading strategy, proposed Rule 2361(a)(2) would permit a firm that is promoting a day-trading strategy to obtain a written agreement from a customer stating that the customer does not intend to use the account for day trading (''other-use agreement'').[12] The firm would be required to provide a risk disclosure statement to the customer even if the firm obtains an other-use agreement. The firm would not be allowed to rely on the other-use agreement if the firm knows the customer intends to use the account for day trading. If the firm opens the account but later knows that the customer is day trading, the firm would then be required to approve the account for day trading.

SIA raises a number of concerns with this provision, including that it ''sets a dangerous precedent by encouraging customers to 'disavow their written pledges with impunity' in order to engage in riskier forms of trading.'' SIA also fears that ''[e]very customer that loses money could claim that he [or she] conveyed an *intention* to day trade, but the firm ignored it.'' They also question how the provision would be interpreted when a firm obtains an other-use agreement from a customer, stops promoting a day-trading strategy, but later knows that the customer is day trading. On balance, the Association believes that the provision is workable and not overly burdensome. The standard is one of actual knowledge, and it seems unlikely that other-use agreements would be widely used at firms that promote day-trading strategies. If a firm stops promoting a day-trading strategy, but later discovers that a customer that provided an other-use agreement is in fact day-trading, the firm should approve that customer for a day-trading strategy. If the firm determines that a day-trading strategy is not appropriate for the person, the firm should prohibit the customer from using the account for day-trading purposes or close the account and return all funds to the customer.

Appropriateness Determination

ETA does not believe that the appropriateness determination for day trading is either useful or necessary. ETA disagrees with the concept that day trading is not appropriate for someone of limited resources and limited investment or trading experience. For example, ETA states that day trading does not require great resources (risk resources of $50,000 to $100,000 are sufficient), and that the proposed rules ignore the benefits provided by training on day-trading techniques. ETA also questions at what point NASD Regulation would consider day traders to be sophisticated given that these traders often make more than 2,000 trading decisions in 30 market days.

The Association does not find ETA's arguments persuasive. The rules are aimed at preventing firms that are actively promoting day-trading strategies from opening accounts for customers who may have limited resources and experience and low risk tolerance. A firm promoting day trading should be required to assess whether a strategy that may require a person to make thousands of trading decisions is appropriate for that individual. The Association recognizes that a person with $50,000 to $100,000 of risk capital may have sufficient resources to open a day-trading account. This factor should be considered as part of the total mix in making the appropriateness determination.

Options Model

ETA argues that the NASD's options rules offer a good model for any proposed day-trading rule. ETA notes that, under the options rules, an individual receives a ''risk disclosure document, signs a new account form verifying the accuracy of the information [the customer has] provided regarding his [or her] finances and market experience, and then, based on this information, is initially allowed to trade the spectrum of available strategies.'' ETA states that ''[t]his sensibly is a one-time analysis, and under the Rule[,] suitability applies only to recommended transactions.'' The day-trading proposal, however, does incorporate many of the same principles contained in the options rules. The appropriateness determination is in fact a one-time analysis to be made by a firm prior to opening the day-trading account.

Further, in Amendment No. 1, the Association is modifying proposed Rule 2360 to incorporate an additional principle from the options rules. The NASD options rules set forth obligations that members must fulfill before conducting certain forms of options trading. NASD Interpretive Material 2860–2 states that in fulfilling their obligations under the NASD rules with respect to options customers who are natural persons, members shall obtain the following information at a minimum: (1) Investment objectives; (2) employment status; (3) estimated annual income from all sources; (4) estimated net worth; (5) estimated liquid net worth; (6) marital status and number of dependents; (7) age; and (8) investment experience and knowledge. The Association is amending proposed Rule 2360 to incorporate a similar information-gathering requirement in the day-trading context.

2. Statutory Basis

NASD Regulation believes that the proposed rule change, as amended, is consistent with Section 15A(b)(6) of the Act [13] in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change codifying the obligation of firms promoting day-trading strategies to disclose the risks of these strategies to non-institutional customers and to determine whether the strategy is appropriate for a customer will help to protect investors and the public interest in an increasingly more sophisticated trading environment.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD *Special Notice to Members* 99–32 (April 15, 1999). The comment period expired

[11] The actual list of activities in the recommended SIA rule language is a modified version of the language proposed in the Original Notice.

[12] The other-use agreement was proposed in both NTM 99–32 and the rule filing.

[13] 15 U.S.C. 78o–3(b)(6).

on May 31, 1999. Thirty-nine comment letters were received in response to the Notice. Copies of the comment letters and a brief summary of the comment letters have been provided to the Commission. Of the 39 comment letters received, approximately 13 were in favor of the proposed rule change, 8 supported risk disclosure only, 12 were opposed to the proposed rule change, and 6 expressed no opinion or addressed broader issues. Further, on September 21, 1999, the Commission published the Association's modified proposal and solicited comments in the **Federal Register** on the Original Notice. This comment period expired on October 12, 1999. The Commission received three comment letters in response to the Original Notice. Many of the issues raised by the commenters in response to the Original Notice, also were raised in the comments in response to NTM 99–32. After considering this most recent set of comments, the Association is proposing Amendment No. 1 to the rule filing, as outlined above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–41 and should be submitted by March 23, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4979 Filed 3–1–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42461; File No. SR–NASD–99–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Regulation ATS

February 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend Rules 4623 and 4613(e) of the NASD to incorporate the requirements of Regulation ATS into the NASD's rule. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

4623. *Alternative Trading Systems* [Electronic Communications Networks]

(a) The Association may provide a means to permit *alternative trading systems (''ATSs''), as such term is defined in Regulation ATS, and* electronic communications networks (''ECNs''), as such term is defined in SEC Rule 11Ac1–1(a)(8),

(1) to [meet] *comply with SEC Rule 301(b)(3);*

(2) to comply with the terms of the ECN display alternative provided for in SEC Rule 11Ac1–1(c)(5)(ii)(A) and (B) (''ECN display alternatives''); *or*

(3) to provide orders to Nasdaq voluntarily.

In providing any such means, the Association shall establish a mechanism that permits the *ATS or* ECN to display the best prices and sizes of orders entered *into the ATS or ECN* by Nasdaq market makers (and other [entities] *subscribers of the ATS or ECN*, if the ECN *or ATS* so chooses [)] *or is required by SEC Rule 301(b)(3) to display a subscriber's order in Nasdaq*) [into the ECN], and allows any NASD member the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a Nasdaq market maker quotation in Nasdaq operated systems.

(b) An *ATS or* ECN that seeks to utilize the Nasdaq-provided means to comply with *SEC Rule 301(b)(3)*, the ECN display alternatives, *or to provide orders to Nasdaq voluntarily* shall:

(1) demonstrate to the Association that *it is in compliance with Regulation ATS or* that it qualifies as an ECN meeting the definition in the SEC Rule;

(2) be registered as a NASD member;

(3) enter into and comply with the terms of a Nasdaq Workstation Subscriber Agreement, as amended for *ATSs and* ECNs*;*

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and *orders from* other [entities] *subscribers of the ATS or ECN*, if the *ATS or* ECN so chooses [)] *or is required by SEC Rule 301(b)(3) to display a subscriber's order in Nasdaq)*, at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the *ATS or* ECN; and prior to entering such prices and sizes, register with Nasdaq Market Operations as an *ATS or* ECN; [and]

(5) provide an automated execution or, if the price is no longer available, an automated rejection of any order routed

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On November 10, 1999, Nasdaq filed Amendment No. 1, which refiled the proposed rule change pursuant to Rule 19(b)(2) rather than pursuant to Rule 19(b)(3)(A) and Rule 19b–4(f)(6), as it was originally filed. Letter from Peter R. Geraghty, Assistant General Counsel, the Nasdaq Stock Market Inc., to Richard Strasser, Assistant Director, SEC, Market Regulation, dated November 10, 1999.

to the *ASTS or* ECN through the Nasdaq-provided system[.]*; and*

(6) not charge to broker-dealers that access the ATS or ECN through Nasdaq any fee that is inconsistent with the requirements of SEC Rule 301(b)(4).

(c) When a NASD member attempts to electronically access through a Nasdaq-provided system an *ATS or* ECN-displayed order by sending an order that is larger than the *ATS's or* ECN's Nasdaq-displayed size and the *ATS or* ECN is displaying the order in Nasdaq on a reserved size basis, the NASD member that operates the *ATS or* ECN shall execute such Nasdaq-delivered order:

(1) Up to the size of the Nasdaq-delivered order, if the *ATS or* ECN order (including the reserved size and displayed portions) is the same size or larger than the Nasdaq delivered order; or

(2) Up to the size of the *ATS or* ECN order (including the reserved size and displayed portions), if the Nasdaq-delivered order is the same size or larger than the *ATS or* ECN order (including the reserved size and displayed portions).

No *ATS or* ECN operating in Nasdaq pursuant to this rule is permitted to provide a reserved-size function unless the size of the order displayed in Nasdaq is 100 shares or greater. For purposes of this rule, the term ''reserved size'' shall mean that a customer entering an order into an *ATS or* ECN has authorized the *ATS or* ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

4613. Character of Quotations

* * * * *

(e) Locked and Crossed Markets

(1) * * *

The prohibitions of this rule include the entry of a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time if such quotation continues to lock or cross the market at the market's opening, and requires a market maker*,* [or] ECN*, or an ATS* that enters a locking or crossing quotation at or after 9:25:00 a.m. Eastern Time to take action to avoid the lock or cross at the market's open or immediately thereafter, but in no case more than 30 seconds after 9:30:00 a.m.

(2) No Changes

(3) For purposes of this rule, the term ''market maker'' shall include:

([i]*A*) any NASD member that enters into an ECN, as that term is defined in SEC Rule 11Ac1–1(a)(8), priced order that is displayed in The Nasdaq Stock Market; [and]

([ii]*B*) any NASD member that operates the ECN when the priced order being displayed has been entered by a person or entity that is not a NASD member;[.]

(C) any NASD member that enters into an ATS, as that term is defined in SEC Regulation ATS, an order that is displayed in The Nasdaq Stock Market; and

(D) any NASD member that operates the ATS when the order being displayed ha been entered by a person or entity that is not an NASD member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the Commission adopted a set of rules under the Act[4] that govern alternative trading systems, including electronic communication networks (''ECN'').[5] Regulation ATS governs alternative trading systems that choose to register as broker-dealers (hereinafter referred to as ''ATSs''). The most familiar type of ATS is an ECN; however, the definition of ATS encompasses other types of trading systems that register as broker dealers. For example, an electronic trading system that only accepts orders from institutions and non-market-maker broker-dealers would be an ATS. Such a system would not be an ECN, however, because, by definition, an ECN is a system that accepts orders from market makers.[6]

The NASD's current rules capture only those ATSs that meet the definition of ECN. Therefore, it is necessary to amend these rules to capture those ATSs that do not meet the definition of ECN. The NASD also must make several other changes to incorporate the requirements of Regulation ATS into its rules. Nasdaq is proposing to amend NASD Rule 4623, which currently governs ECNs that display orders in Nasdaq (''ECN Rule''), and NASD Rule 4613(e), which governs locked and crossed markets (''Locked and crossed Market Rule''). The amendments will: (1) Incorporate into the ECN Rule the new obligations that are imposed on ECNs under Regulation ATS, (2) extend the current ECN Rule so that it captures other types of ATSs, and (3) extend the current Locked and Crossed Market Rule to capture other types of ATSs.

ECN Rule

Regulation ATS requires ATSs (including ECNs) that account for a significant percentage of the volume in a security listed on Nasdaq to display in the public quotation stream the orders of all subscribers of the ATS, which includes orders from institutions and broker-dealers that are not market makers.[7] Currently, the ECN Rule only requires ECNs to display orders entered by market makers. Accordingly, Nasdaq is proposing to amend the ECN Rule to require ECNs to display in Nasdaq any subscriber orders required under Regulation ATS.

As discussed above, Regulation ATS also governs alternative trading systems that are organized other than as ECNs. Consequently, these other types of ATSs may be required to display orders in Nasdaq. Nasdaq is proposing to expand the current ECN Rule to encompass these other types of ATSs. These systems will have to fulfill a series of obligations identical to those imposed on ECNs that display orders in Nasdaq.

Locked and Crossed Markets

The Locked and Crossed Markets Rule, NASD Rule 4613(e), is designed to limit locked and crossed markets by imposing on market makers an obligation to take reasonable measures

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[4] 17 CFR 242.300 *et seq.* (''Regulation ATS'').

[5] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

[6] SEC Rule 11Ac1–1(a)(8), 17 CFR 240.11Ac1–1(a)(8).

[7] Specifically, if during at least 4 of the preceding 6 calendar months an ATS accounts for five percent or more of the aggregate average share volume in a Nasdaq National Market (''NNM'') or SmallCap security, the ATS must display the best prices of orders entered by all subscribers (*e.g.,* market makers, non-market makers, and institutions). For example, if as calculated on July 1, 1999 an ATS accounted for 7% of the trading volume in an NNM security during January, February, April, and May 1999, the ATS would be required to reflect in Nasdaq its best priced order even if the order is from an institution or other entity that is not a Nasdaq market maker. The Nasdaq securities subject to this requirement are being phased-in according to a schedule set by the Commission. *See* Securities Exchange Act Release No. 41297 (April 16, 1999), 64 FR 19450 (April 21, 1999).

before locking or crossing a market. Currently included within the definition of market maker for purposes of this rule is: (1) Any NASD member that enters orders into an ECN, or (2) any NASD member that operates as an ECN (when the priced order being displayed by the ECN has been entered by an entity that is not an NASD member). Reasonable measures include attempting to execute against the contra side of the market prior to entering an order into Nasdaq's systems that would lock or cross the market in a security. Nasdaq is proposing to amend the Locked and Crossed Markets Rule to capture NASD members that place orders in an ATS or operate as an ATS (when the priced order being displayed by the ATS has been entered by an entity that is not an NASD member).

* * * * *

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 11A and 15A(b)(6) of the Act.[8] Section 11A(a)(1)(C)[9] provides that is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Section 15A(b)(6)[10] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Nasdaq believes the proposal is consistent with Sections 11A(a)(1)(C) and Section 15A(b)(6)[11] because it will permit Nasdaq to incorporate ATS orders into the Nasdaq quote montage and provide NASD members with the ability to access these orders. In addition, to limit market disruptions caused by locked or crossed markets, the proposal would require members that submit orders to ATSs and ATSs, in certain circumstances, to take reasonable measures before locking or crossing a market. Finally, the amendments would incorporate into the NASD's rules the new obligations imposed on ECNs by Regulation ATS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rue change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submisisons should refer to SR–NASD–99–49 and should be submitted by March 23, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–5060 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78k–1 and 78o–3(b)(6).

[9] 15 U.S.C. 78k–1(a)(1)(C).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78k–1 and 78o–3(b)(6).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000356]

EDF Ventures, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that EDF Ventures, L.P. (''EDF''), 425 North Main Street, Ann Arbor, MI 48104, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the completed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. EDF Ventures, LP plans to provide equity financing to Xtera Communications, Inc., 1334 Bordeaux Drive, Sunnyvale, CA 94089. The financing will be used for research, development, and working capital purposes.

The financing is brought within the purview of section Sec. 107.730(a)(1) of the Regulations because Enterprise Development Fund II, L.P., an associate of EDF Ventures, LP owns greater than 10 percent of Xtera Communications, Inc., and therefore Xtera Communications is considered an Associate of EDF Ventures, LP as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business

Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this notice shall be published, in accordance with Sec. 107.730(g), in the **Federal Register** by SBA.

Dated: February 24, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–5025 Filed 3–1–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000356]

EDF Ventures, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that EDF Ventures, L.P. (''EDF''), 425 North Main Street, Ann Arbor, MI 48104, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the completed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (1998)). SBA may not grant an exemption until Notices of this transaction have been published. EDF Ventures, LP plans to provide equity financing to Centromine, Inc., 3756 Plaza Street, Ann Arbor, MI 48108. The financing will be used for marketing and working capital purposes.

The financing is brought within the purview of section Sec. 107.730(a)(1) of the Regulations because Enterprise Development Fund II, L.P., an associate of EDF Ventures, LP owns greater than 10 percent of Xtera Communications, Inc., and therefore Xtera Communications is considered an Associate of EDF Ventures, LP as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this notice shall be published, in accordance with Sec. 107.730(g), in the **Federal Register** by SBA.

Dated: February 24, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–5026 Filed 3–1–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3237]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Kremlin Gold—1000 Years of Russian Gems & Jewels''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition ''Kremlin Gold—1000 Years of Russian Gems & Jewels,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Houston Museum of Natural Science, Chicago, from on or about April 15—September 7, 2000, then The Field Museum, Chicago, on or about October 21, 2000—April 1, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, DC 20547–0001.

Dated: 23 February 2000.

William P. Kiehl,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–5063 Filed 3–1–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice #3231]

Secretary of State's Arms Control and Nonproliferation Advisory Board; Notice of Closed Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(a)(2)(1996), the Secretary of State announces the following changes and additions to the Arms Control and Nonproliferation Advisory Board (ACNAB) meetings:

Date and Location

March 8–9, 2000—Department of State, Washington, DC
April 24–25, 2000—Livermore National Laboratory, Livermore, CA
May 8–9, 2000—Department of State, Washington, DC

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(d)(1996), and in accordance with Executive Order 12958, in the interest of national defense and foreign policy, it has been determined that these Board meetings will be closed to the public, since the ACNAB members will be reviewing and discussing classified matters.

The purpose of this Advisory Board is to advise the President and the Secretary of State on scientific, technical, and policy matters affecting arms control. The board will review specific arms control and nonproliferation issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Convention on Conventional Weapons and the Chemical and Biological Weapons Convention.

For more information, please contact Robert Sherman, Executive Director, Arms Control and Nonproliferation Advisory Board, at (202) 647–1192.

Dated: February 25, 2000.

Robert Sherman,

Executive Director, Secretary of State's Arms Control and Nonproliferation Advisory Board.

[FR Doc. 00–5173 Filed 2–29–00; 2:11 pm]

BILLING CODE 4710–27–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The Regional Resource Stewardship Council (RRSC) will hold its first meeting to consider various

matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

1. Introductions/TVA River System Overview
2. FACA responsibilities and committee operation
3. Public comments
4. RRSC member comments

The meeting is open to the public. Members of the public who wish to make oral public comments may do so during the Public comments portion of the agenda. Up to one hour will be allotted for the Public comments with participation available on a first-come, first-served basis. Each speaker will have from 2–5 minutes to address the Council depending on the number who register at the door. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, or faxed to (865) 632–3146.

DATES: The meeting will be held on March 17, 2000, from 8:00 a.m. to 4:30 p.m., EST.

ADDRESSES: The meeting will be held at the Chattanooga Marriott, 2 Carter Plaza, Chattanooga, Tennessee, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, (865) 632–2333.

Dated: February 24, 2000.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 00–4975 Filed 3–1–00; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment Regarding Softwood Lumber Practices in Canada and Softwood Lumber Trade Between the United States and Canada

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for comments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) seeks public comment concerning softwood lumber trade betweem the United States and Canada, in light of the pending expiration of the U.S.-Canada Softwood Lumber Agreement in April 2001. The TPSC invites public comment with respect to Canadian softwood lumber practices. Furthermore, the TPSC invites comment with respect to economic and environmental aspects of: (a) Those softwood lumber practices, (b) related U.S.-Canada softwood lumber trade issues, and (c) a possible negotiation concerning Canadian provincial lumber practices and softwood lumber trade between the United States and Canada.

FOR FURTHER INFORMATION CONTACT: For Procedural questions concerning public comments, contact Gloria blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. All other questions concerning the U.S.-Canada lumber trade issues should be addressed to Mary Ryckman in the agency's Office of North American Affairs at (202) 395–3412.

SUPPLEMENTARY INFORMATION:

U.S.-Canada Softwood Lumber Agreement

On May 29, 1996, the United States and Canada signed the U.S.-Canada Softwood Lumber Agreement. The five-year Agreement went into effect April 1, 1996. Under the Agreement, fee free exports of softwood lumber from the four major lumber producing provinces in Canada (Alberta, British Columbia, Ontario and Quebec) were limited to 14.7 billion board feet fee-free a year. These four provinces account for 95% of lumber shipments from Canada. The Agreement does not impose any restrictions on lumber coming from other provinces because timber there is sold competitively.

The details of the Agreement are as follows:

- Softwood lumber means articles classified under tariff items 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States.
- The Agreement establishes an export fee system. Shipments from the four provinces in excess of 14.7 billion board feet in any year are subject to a surcharge of US$50 per thousand board feet up to an additional 650 million board feet. Once that level is reached, the surcharge is increased to US$100 per thousand board feet. While US$100 per thousand board feet acts as a substantial deterrent to additional shipments in all but the strongest markets, there is no point at which shipments from Canada are prohibited outright.
- The Agreement contains a trigger price mechanism, whereby an additional 92 million board feet is allowed into the United States free of charge for every quarter in which the price of lumber equals of exceeds the trigger price (a quarterly average price of $405 per thousand board feet of eastern spruce-pine-fir, standard or better, kiln-dried, Great Lakes delivered lumber as reported in *Random Lengths*).
- The U.S. Customs Service monitors shipment levels and fee payments to ensure that the Agreement is being properly implemented.

Modification of the Softwood Lumber Agreement

On August 26 1999, the United States and Canada resolved a U.S. dispute settlement case under the Agreement over a 1998 timber stumpage reduction in British Columbia. The United States considered the reduction to be a violation of the 1996 U.S.-Canada Softwood Lumber Agreement. British Columbia's June 1, 1998 stumpage change applied to all timber grown on provincially-owned lands, which accounts for the overwhelming majority of timber harvested in the province. The province reduced its timber harvesting fees by an average of C$8.10 per cubic meter, or 24%, for timber harvested in coastal areas and by C$3.50 per cubic meter, or 14%, on average for inland timber. Estimates are that the new, lower fees resulted in an overall price reduction of some C$234 million during the first year they were in effect and will lower harvesting fees by approximately C$640 million over three years.

The settlement covers exports from British Columbia for the remainder of the Agreement. The settlement calls for Canada to impose a new, higher fee on B.C. lumber exports when exports from the province exceed recent average annual shipments to the United States. The settlement also requires Canada to begin imposing what was, until now, the highest export surcharge called for under the Agreement at lower lumber export levels than previously was the case. During year four of the Agreement (1999/2000), exports from British Columbia subject to the lower fee will be limited to 272 million board feet, while upper-fee exports will be limited to 110 million board feet. All British Columbia exports beyond those amounts will be subject to a new fee of US$146.25/thousand board feet. In year five, the export volumes triggering fees will be the same or lower, and the new fee will be adjusted for inflation.

History of Softwood Lumber Trade Between the United States and Canada

On December 30, 1986, the United States and Canada entered into a

Memorandum of Understanding (MOU) to settle a pending countervailing duty (CVD) investigation of Canadian softwood lumber. Among other things, the MOU provided for Canada to assess a 15% export fee on certain lumber exports to the United States. The fee could be reduced or eliminated for exports from a province that too, so-called replacement measures to increase stumpage or other charges on lumber.

In September 1991, as permitted under the MOU, Canada provided notice that it was unilaterally terminating the MOU in 30 days. In response, in October 1991, Commerce self-initiated a section 301 investigation, immediately determining Canada's action to be unreasonable and to burden or restrict U.S. commerce, and took section 301 action.

The section 301 action applied to imports that entered during the 5-month period (October 1991–March 1992) prior to Commerce's preliminary CVD determination. (Imports entering after that time could be assessed duties under the CVD laws.) Under the section 301 action, USTR required importers of softwood lumber from certain provinces to post a bond in an amount up to 15 percent. The amount was lower or zero where a province had replacement measures in place. USTR indicated that these entries during the interim period prior to Commerce's preliminary CVD determination would ultimately be assessed fees in the amount of Commerce's final CVD determination.

Canada challenged in the GATT both the section 301 action and the self-initiation of the CVD investigation. The GATT panel issued a mixed decision, finding that the initiation of the CVD investigation did not violate GATT but that the section 301 action did.

When the final CVD determination was issued in May 1992 (and while the GATT panel proceedings were pending), both the U.S. domestic industry and Canadian parties sought review by a binational panel under Chapter 19 of the U.S.-Canada FTA. The binational panel found Commerce's subsidy determination to be inconsistent with U.S. law and directed Commerce to issue a negative CVD determination. An Extraordinary Challenge Committee (ECC) requested by the United States upheld the panel's decision. Consequently, Commerce revoked the CVD order in August 1994, and USTR terminated the section 301 action in October 1994.

In September 1994, the domestic industry filed a lawsuit in U.S. court alleging that the binational panel process was unconstitutional. In December 1994, the industry withdrew this complaint following the establishment of a consultative process between the United States and Canada regarding softwood lumber trade. This process ultimately led to the signing of the Softwood Lumber Agreement in May 1996.

Request for Comments

Given that the U.S.-Canada Softwood Lumber Agreement expires in April 2001, the TPSC invites public comment with respect to Canadian softwood lumber practices. Furthermore, the TPSC invites comment with respect to economic and environmental aspects of: (a) Those softwood lumber practices, (b) related U.S.-Canada softwood lumber trade issues, and (c) a possible negotiation concerning Canadian provincial lumber practices and softwood lumber trade between the United States and Canada.

Those persons wishing to submit written comments, should submit ten (10) typed copies, no later than noon, Friday, April 14, 2000, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 Seventeenth Street, NW, Washington, DC 20508. Comments should state clearly the position taken and should describe with particularly the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a non-confidential summary thereof.

Non-confidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 00–5084 Filed 3–1–00; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending February 18, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–6935.
Date Filed: February 14, 2000.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 ME–TC3 0086 dated 15 February 2000
Mail Vote 063—TC23 Middle East–TC3
Special Passenger Amending Resolution from Thailand
Intended effective date: 1 March 2000

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–4997 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending February 18, 2000.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–3404 and OST–1998–3479.
Date Filed: February 14, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 13, 2000.
Description: Application of Aero Micronesia, Inc. d/b/a Asia Pacific Airlines (''Asia Pacific'') pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for renewal of its Certificates of Public Convenience and Necessity for Interstate Charter Air Transportation and Foreign Charter Air Transportation, which authorize Asia Pacific to engage in interstate and foreign charter air transportation of property and mail.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–4996 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (00–02–C–00–TWF) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Joslin Field-Magic Valley Regional Airport, Submitted by the City of Twin Falls, Joslin Field-Magic Valley Regional Airport, Twin Falls, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Joslin Field-Magic Valley Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before April 3, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to, Mr. David Allen, Airport Manager, at the following address: 321 Second Avenue East, P.O. Box 1907, Twin Falls, Idaho 83303–1907.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Joslin Field-Magic Valley Regional Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang; Seattle Airports District Office, SEA–ADO, Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (00–02–C–00TWF) to impose and use PFC revenue at Joslin Field-Magic Valley Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 23, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Twin Falls, Joslin Field-Magic Valley Regional Airport, Twin Falls Idaho, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 23, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2002.

Proposed charge expiration date: January 1, 2007.

Total requested for use approval: $483,040.

Brief description of proposed project: Reconstruct Northwest Apron, Airport Signing System Update, Aircraft Rescue and Fire Fighting (ARFF) Vehicle and Equipment, Terminal Building Auto Parking and Lighting, Apron Expansion, Medium Intensity Taxiway Lighting System, ARFF Building, Runway 7/25 Cable System Rehabilitation and Wind Cone Replacement, and Rehabilitation of Runway 7/25.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air taxi/commercial operators utilizing aircraft having a seat capacity of less than twenty passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airport Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addtion, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Joslin Field-Magic Valley Regional Airport.

Issued in Renton, Washington on February 23, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–5058 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–6985]

Insurance Cost Information Regulation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the 2000 text and data that all car dealers must include in an insurance cost information booklet that they must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information may assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

ADDRESSES: Interested persons may obtain a copy of this booklet by contacting the U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. [Docket hours are from l0:00 am to 5:00 pm].

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Chief, Consumer Programs Division, NHTSA, 400 Seventh Street S.W., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION: Pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941(e), on March 5, 1993, 58 FR 12545, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR Part 582, *Insurance Cost Information Regulation,* to require all dealers of automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility. On March 17, 1994, NHTSA denied a petition submitted by the National Automobile Dealers Association (NADA) for NHTSA to reconsider Part 582 insofar as it requires all automobile dealers to prepare the requisite number of copies for distribution of the insurance cost information to prospective purchasers. 59 FR 13630.

On March 24, 1995, NHTSA published a Final Rule to amend Part 582 in a number of respects. 60 FR 15509. These changes included wording clarifications and a change in the availability date of the booklet.

Pursuant to 49 CFR 582.4, all automobile dealers are required to make available to prospective purchasers booklets that include this comparative information as well as certain mandatory explanatory text that is set out in section 582.5. Early each year, NHTSA publishes the annual **Federal Register** document updating the Highway Loss Data Institute's (HLDI) December Insurance Collision Report. Booklets reflecting the updated data must be available for distribution to prospective purchasers without charge

within 30 days from the date of the **Federal Register**.

NHTSA is mailing a copy of the 2000 booklet to each dealer on the mailing list that the Department of Energy uses to distribute the ''Gas Mileage Guide.'' Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by [30 days after date of publication]. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Ms. Rosalind Proctor of NHTSA's Office of Planning and Consumer Programs (202) 366–0846 to receive a copy of the booklet and to be added to the mailing list. Dealers may also obtain a copy of the booklet through the NHTSA web page at: www.nhtsa.dot.gov/cars/problems/studies/InsCost/InsCost. (49 U.S.C. 32302; delegation of authority at 49 CFR 1.50(f).)

Issued on: February 28, 2000.

Stephen R. Kraztke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–5059 Filed 3–1–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33746]

Mississippi Rail Group, Inc.—Lease Exemption—State of Mississippi

Mississippi Rail Group, Inc. (MRG), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from the State of Mississippi approximately 21.4 miles of rail line from milepost 0.2, at Aberdeen Junction, to milepost 21.66, at Kosciusko, in Holmes and Attala Counties, MS. MRG will be the operator of the line.

MRG states that the lease of the rail line was consummated on or about October 27, 1998. MRG filed its verified notice of exemption with the Board on February 14, 2000. Thus, the effective date of the exemption is February 21, 2000 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33746, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Mr. David E. Delatte, Sr., President, Mississippi Rail Group, Inc., P.O. Box 278, Kosciusko, MS 39090.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 24, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–4924 Filed 3–1–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of International Investment; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of International Investment within the Department of the Treasury is soliciting comments concerning the information collection provisions of the Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons, 31 CFR 800.402.

DATES: Written comments should be received on or before May 1, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Gay Sills, Director, Office of International Investment, Department of the Treasury, 1500 Pennsylvania Ave., N.W., 4201NY, Washington, D.C. 20220 (Tel.: 202/622–1860).

FOR FURTHER INFORMATION CONTACT: Jack Dempsey, Economist (Tel.: 202/622–1860), Office of International Investment, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220; Francine McNulty Barber, Senior Counsel, Department of the Treasury, Room 2010, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220, (202/622–1947).

SUPPLEMENTARY INFORMATION:

Title: Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

OMB Number: 1505–0121.

Abstract: The information request in this proposed collection is contained in section 800.402. The information collected under these regulations is used by the Committee on Foreign Investment in the United States (CFIUS), an inter-agency committee chaired by the Secretary of the Treasury and comprised of the Secretaries of State, Defense, Treasury and Commerce, the Attorney General, the U.S. Trade Representative, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and the Assistants to the President for National Security, National Economic Policy, and Science and Technology. The President has delegated to CFIUS the President's authority under section 721 of the Defense Production Act to determine the effects on the national security of acquisitions proposed or pending after the date of enactment (August 23, 1988) by or with foreign persons that could result in foreign control of persons engaged in interstate commerce in the United States.

Current Actions: Extension.

Type of Review: Extension.

Affected Public: Foreign businesses and foreign individuals.

Estimated Number of Responses: 100.

Estimated Time Per Respondent: This varies, depending on individual circumstances, with an average of 60 hours.

Estimated Total Annual Burden Hours: 6000 hours.

Requests for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 14, 2000.

Francine McNulty Barber,

Senior Counsel, Office of the Assistant General Counsel for International Affairs.

[FR Doc. 00–5071 Filed 3–1–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–12]

Retraction of Revocation Notice

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

ACTION: General notice; correction.

SUMMARY: This document corrects an erroneous Treasury Decision (T.D.) designation on a document recently published in the **Federal Register**.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 2000, Customs published in the **Federal Register** (65 FR 10152) a general notice advising the public that three Customs broker license references had been erroneously included in a list of revoked Customs broker licenses previously published in the **Federal Register**. However, that February 25, 2000, notice was incorrectly designated in the headings section as Treasury Decision (T.D.) 00–9; the designation should have read ''T.D. 00–12''. This document corrects that designation error.

Correction of Publication

In the general notice published in the **Federal Register** at 65 FR 10152 on February 25, 2000, as Treasury Decision 00–9, the reference to ''T.D. 00–9'' in the headings section is corrected to read T.D. 00–12''.

Dated: February 28, 2000.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 00–5080 Filed 3–1–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Renewal of the Generalized System of Preferences

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a renewable preferential trade program that allows the eligible products of designated developing countries to directly enter the United States free of duty. The GSP program expired on June 30, 1999, but has been renewed through September 30, 2001, effective December 17, 1999, with retroactive effect to July 1, 1999, by a provision in the Ticket To Work and Work Incentives Improvement Act of 1999. This document provides notice to importers that Customs is again accepting claims for GSP duty-free treatment for merchandise entered, or withdrawn from a warehouse, for consumption and that Customs is processing refunds on all duties paid, with interest from the date the duties were deposited, on GSP-eligible merchandise that was entered during the period that the GSP program was lapsed.

FOR FURTHER INFORMATION CONTACT: For general operational questions:

Formal entries: Leon Hayward, 202–927–9704

Informal entries: John Considine, 202–927–0042

Mail entries: Robert Woods, 202–927–1236

Passenger claims: Wes Windle, 202–927–0167

For specific questions relating to the Automated Commercial System: James Halpin, Office of Information and Technology, 703–921–7128.

Questions from filers regarding ABI transmissions should be directed to their ABI client representatives. Persons with other questions regarding this notice may contact Leon Hayward, International Agreements, 202–927–9704.

SUPPLEMENTARY INFORMATION:

Background

Section 501 of the Trade Act of 1974, as amended (19 U.S.C. 2461), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary countries for specific time periods. Pursuant to 19 U.S.C. 2465, as amended by section 1011(a) of Pub. L. 105–277, 112 Stat. 2681, duty-free treatment under the GSP program expired on June 30, 1999.

On December 17, 1999, the President signed the Ticket To Work and Work Incentives Improvement Act of 1999 (Pub.L. 106–170, 113 Stat. 1860). Section 508 of Pub. L. 106–170 pertains to the extension of duty-free treatment and the retroactive application for certain liquidations and reliquidations under the GSP. Section 508 provides that GSP duty-free treatment shall be applied to eligible articles from designated beneficiary countries that are entered, or withdrawn from warehouse, for consumption on or after July 1, 1999, through September 30, 2001. Further, regarding any entries made after June 30, 1999 through December 16, 1999, to which duty-free treatment would have applied if GSP had been in effect during that time period, any duty paid with respect to any such entry shall be refunded provided that a request for liquidation or reliquidation of that entry, containing sufficient information to enable Customs to locate the entry or to reconstruct the entry if it cannot be located, is filed with Customs by June 14, 2000 (within 180 days after the date of Pub. L. 106–170's enactment).

Recognizing the impact that retroactive renewal and consequent numerous reliquidations will have on both importers and Customs, Customs developed a mechanism to facilitate refunds (*see,* **Federal Register** Notice of June 4, 1997, 62 FR 30672). On January 7, 2000, Customs began processing refunds due to the recent renewal of the GSP. Customs expects the processing of refunds to take from four to eight weeks for certain formal Automated Broker Interface (ABI) entries.

Duty-Free Entry Summaries

Effective December 17, 1999, filers again are entitled to file GSP-eligible entry summaries without the payment of estimated duties.

Refunds With Interest

A. Formal Entries

Customs will liquidate or reliquidate all affected entry summaries and refund any duties deposited for items qualifying for GSP and for which requests for liquidation or reliquidation are timely filed. Field locations shall not issue GSP refunds except as instructed to do so by Customs Headquarters.

If an ABI entry summary was filed with payment of estimated duties using the Special Program Indicator (SPI) for the GSP (the letter ''A'') as a prefix to the tariff number, no further action by the filer is required; filings with the SPI ''A'' will be treated as conforming requests for refunds. If an ABI entry summary was filed with payment of estimated duties without the use of the SPI ''A'' as a prefix to the tariff number, a refund of duties deposited must be requested in writing as described below for non-ABI entry summaries.

Non-ABI filers must request a refund in writing from the Port Director at the port of entry by June 14, 2000, regardless if they previously designated a refund on the Customs Form 7501 by using the SPI ''A'' code. The letter may cover either single entry summaries or

all entry summaries filed by an individual filer at a single port. To expedite refunds, Customs recommends the following information be included in each letter:

1. A statement requesting a refund, as provided by section 508 of the Ticket To Work and Work Incentives Improvement Act of 1999;

2. An enumeration of the entry numbers and line items for which refunds are requested; and

3. The amount requested to be refunded for each line item and the total amount owed for all entry summaries.

Interest on duties deposited will be paid, pursuant to section 505 of the Tariff Act of 1930, as amended (19 U.S.C. 1505), based on the quarterly Internal Revenue Service interest rates used to calculate interest on refunds of Customs duties as follows:

	July 1, 1999–December 16, 1999
Corporate Rate	7%
Non-Corporate Rate	8%

B. Informal Entries Filed via ABI

Refunds with interest on informal entries filed via ABI on a Customs Form 7501 with the SPI ''A'' will be processed in accordance with the procedures discussed above.

C. Mail Entries

The addressees on mail entries must request a refund of GSP duties and return it, along with a copy of the CF 3419A, to the appropriate International Mail Branch (address listed on bottom right hand corner of CF 3419A). It is essential that a copy of the CF 3419A be included, as this will be the only means of identifying whether GSP products have been entered and estimated duties and fees have been paid.

D. Baggage Declarations and Non-ABI Informals

If travelers/importers wrote a statement directly on their Customs declarations (CF 6059B) or informal entries (CF 363 or CF 7501) requesting a refund, no further action by the traveler/importer will be required; the statement will be treated as a conforming request for a refund. Failure to request a refund in this manner does not preclude a traveler/importer from otherwise making a timely request in writing, as described above for non-ABI filers.

Dated: February 25, 2000.

Robert J. McNamara,

Acting Assistant Commissioner, Field Operations.

[FR Doc. 00–5081 Filed 3–1–00; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 65, No. 42

Thursday, March 2, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

RIN 3038-ZA08

Average Price Calculations by Futures Commission Merchants

Correction

In notice document 00–1907 beginning on page 4807 in the issue of Tuesday, February 1, 2000, make the following correction:

On page 4808, in the second column, in paragraph 5., in the fourth line remove ''maintains them in accounts''.

[FR Doc. C0–1907 Filed 3–1–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

List of Correspondence–Office of Special Education and Rehabilitative Services

Correction

In notice document 00–4258, beginning on page 9178, in the issue of Wednesday, February 23, 2000, make the following correction.

On page 9179, in the second column, in the second full paragraph, '' Letter dated February 5, 1999 to U.S. Senator Richard J.'' should be added before ''Durbin''.

[FR Doc. C0–4258 Filed 3–1–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42396; File No. SR-CBOE-99-40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Operation of the Retail Automatic Execution System

Correction

In notice document 00–3370, beginning on page 7404, in the issue of Monday, February 14, 2000, make the following corrections:

1. On page 7404, in the second column, the docket number is corrected to read as set forth above.

2. On page 7407, in the first column, in the ninth line from the bottom, ''[insert date 21 days from date of publication]'' should read ''March 6, 2000''.

[FR Doc. C9–3370 Filed 3–1–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASO-23]

Amendment of Class E Airspace; London, KY

Correction

In rule document 00–2773 beginning on page 5999 in the issue of Tuesday, February 8, 2000, make the following correction:

§71.1 [Corrected]

On page 6000, in §71.1, in the second column, in the ninth line ''with an'' should read ''within an''.

[FR Doc. C0–2773 Filed 3–1–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
March 2, 2000

Part II

Environmental Protection Agency

40 CFR Part 141

Unregulated Contaminant Monitoring Regulation for Public Water Systems: Analytical Methods for Perchlorate and Acetochlor; Announcement of Laboratory Approval and Performance Testing (PT) Program for the Analysis of Perchlorate; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6544–6]

Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods for Perchlorate and Acetochlor; Announcement of Laboratory Approval and Performance Testing (PT) Program for the Analysis of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, requires the U.S. Environmental Protection Agency to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored. In fulfillment of this requirement, EPA published the Revisions to the Unregulated Contaminant Monitoring Rule (UCMR) on September 17, 1999 (64 FR 50556), which included a list of contaminants to be monitored.

Both perchlorate and acetochlor were placed on the UCMR (1999) List 1, Assessment Monitoring, with the method listed as ''Reserved'' pending imminent conclusion of EPA refinement and review of the analytical methods for perchlorate and acetochlor. EPA is taking direct final action on this rule. This rule specifies the approved analytical methods for measurement of perchlorate and acetochlor in drinking water and includes notice to all laboratories interested in supporting perchlorate monitoring of the laboratory approval requirements, including participation in a perchlorate Performance Testing (PT) Program. The rule also includes minor technical changes to correct or clarify the rule published on September 17, 1999.

DATES: This rule is effective on January 1, 2001, without further notice, unless EPA receives adverse comment by April 3, 2000. If EPA receives such comment we will publish a timely withdrawal in the **Federal Register** and inform the public that the rule will not take effect.

The incorporation by reference of the publications listed in today's rule is approved by the Director of the **Federal Register** as of January 1, 2001.

For judicial review purposes, this final rule is promulgated as of 1:00 p.m. (Eastern time) on March 16, 2000, as provided in 40 CFR 23.7.

Any laboratory interested in conducting perchlorate monitoring must participate in the Performance Testing (PT) Program and should submit a request letter to EPA, received at the EPA by March 31, 2000. EPA will not be able to consider any letters received after this date. Any interested laboratory which does not meet this deadline or fails to successfully pass the initial PT study and would still like to support this monitoring, will need to submit a request letter by October 6, 2000 in order to be eligible for a second PT study.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–99–19, Water Docket (MC 4101), U.S. EPA, 401 M Street, SW, Washington DC, 20460. Please submit an original and three copies of your comments and enclosures (including references). The full record for this document has been established under docket number W–99–19 and includes supporting documentation as well as printed, paper versions of electronic comments. The full record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, East Tower Basement, U.S. EPA, 401 M Street, SW, Washington DC. For access to docket (Docket No. W–99–19) materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m., Eastern Time, Monday through Friday, to schedule an appointment. A reasonable fee may be charged for copying. Laboratories interested in supporting perchlorate monitoring must send a request letter to: Daniel P. Hautman, Perchlorate PT Program Coordinator, MLK 140, U.S. EPA, 26 W. Martin Luther King Dr., Cincinnati, OH 45268.

FOR FURTHER INFORMATION CONTACT: Rachel Sakata, Standards and Risk Management Division, U.S. Environmental Protection Agency, 401 M Street (MC 4607), Washington DC 20460, (202) 260–2527. For technical information regarding the methods, contact David Munch, Technical Support Center, U.S. Environmental Protection Agency, 26 W. Martin Luther King Dr., Cincinnati OH, 45268, (513) 569–7843.

General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: For copies of EPA Method 314.0, ''Determination of Perchlorate in Drinking Water Using Ion Chromatography,'' contact the EPA Safe Drinking Water Hotline within the United States at (800) 426–4791 (Hours are Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time). Alternately, the method can be assessed and downloaded directly on-line at www.epa.gov/safewater/methods/sourcalt.html.

Abbreviations and Acronyms Used in the Preamble and Final Rule

2,4-DNT	2,4-dinitrotoluene.
2,6-DNT	2,6-dinitrotoluene.
4,4′-DDE	4,4′-dichloro dichlorophenyl ethylene, a degradation product of DDT.
Alachlor ESA	alachlor ethanesulfonic acid, a degradation product of alachlor.
AOAC	Association of Official Analytical Chemists.
ASTM	American Society for Testing and Materials.
CAS	Chemical Abstract Service.
CASRN	Chemical Abstract Service Registry Number.
CCL	Contaminant Candidate List.
CFR	Code of Federal Regulations.
CWS	community water system.
DCPA	dimethyl tetrachloroterephthalate, chemical name of the herbicide dacthal.
DCPA mono- and di-acid degradates.	degradation products of DCPA.
EPA	Environmental Protection Agency.
EPTC	s-ethyl-dipropylthiocarbamate, an herbicide.
EPTDS	Entry Point to the Distribution System.
ESA	ethanesulfonic acid, a degradation product of alachlor.
FSIS	federalism summary impact statement.
IC	ion chromatography.
ICR	Information Collection Rule.
MCL	maximum contaminant level.
MCT	Matrix Conductivity Threshold.
MDL	method detection limit.
MRL	minimum reporting level.
MS	sample matrix spike.
MSD	sample matrix spike duplicate.
NCOD	National Drinking Water Contaminant Occurrence Database.
NTNCWS	non-transient non-community water system.
NTTAA	National Technology Transfer and Advancement Act.
OGWDW	Office of Ground Water and Drinking Water.

ABBREVIATIONS AND ACRONYMS USED IN THE PREAMBLE AND FINAL RULE—Continued

OMB	Office of Management and Budget.
PBMS	Performance-based Measurement System.
PWS	Public Water System.
QA	quality assurance.
QC	quality control.
RFA	Regulatory Flexibility Act.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
SDWA	Safe Drinking Water Act.
SM	Standard Methods.
SOP	standard operating procedure.
TDS	total dissolved solid.
UCMR	Unregulated Contaminant Monitoring Regulation/ Rule.
UCM	Unregulated Contaminant Monitoring.
UMRA	Unfunded Mandates Reform Act of 1995.
USEPA	United States Environmental Protection Agency.
VOC	volatile organic compound.
ug/L	micrograms per liter.
uS/cm	microsiemens per centimeter.

Preamble Outline

I. Regulatory Background
II. Explanation of Today's Action
A. Relation to the UCMR Published in September 1999
B. Systems Affected by This Rule
C. Analytical Methods
1. Perchlorate
2. Acetochlor
3. Quality Control and Analytical Confirmation
D. Peer Review
1. Perchlorate
2. Acetochlor
E. Laboratory Approval and Certification
1. Perchlorate
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F. Implementation
G. Performance-based Measurement System
III. Technical Changes and Clarification to § 141.40
A. Change to § 141.40 (a)(5)(ii)(C)
B. Change to § 141.40 (a)(5)(ii)(G)
C. Change to § 141.40 (a)(5)(iii)(G)
D. Change to § 141.40 (b)(1)(i)
E. Change to § 141.40 (b)(1)(vii)
F. Clarification of Monitoring for DCPA Mono and Di-Acid Degradate
IV. Cost and Benefits of the Rule
V. Administrative Requirements
A. Executive Order 12866—Regulatory Planning and Review
B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et.seq.*
F. National Technology Transfer and Advancement Act
G. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
H. Executive Order 13132—Federalism
I. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
J. Administrative Procedure Act
K. Congressional Review Act
VI. Public Involvement in Regulation Development

Potentially Regulated Entities

The regulated entities are public water systems. All large community and non-transient non-community water systems serving more than 10,000 persons are required to monitor under the revised UCMR. A community water system (CWS) is a public water system which serves at least 15 service connections used by year-round residents or regularly serve at least 25 year-round residents. Non-transient non-community water system (NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. Only a national representative sample of community and non-transient non-community systems serving 10,000 or fewer persons are required to monitor for perchlorate and acetochlor. Transient non-community systems, which are systems that do not regularly serve at least 25 of the same persons over six months per year, are not required to monitor. States, Territories, and Tribes, with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act sometimes conduct analyses to measure for contaminants in water samples and are regulated by this action. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	SIC
State, Territorial, and Tribal governments ..	States, territorial and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territorial and tribal governments that themselves operate community and non-transient non-community water systems required to monitor.	9511
Industry	Private operators of community and non-transient non-community water systems required to monitor.	4941
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	9511

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.40 of the revised Unregulated Contaminant Monitoring Rule, published September 17, 1999 in 64 FR 50556. If you have questions regarding the applicability of this action to a particular entity, consult the first person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Regulatory Background

SDWA section 1445 (a)(2), as amended in 1996, requires EPA to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored. To meet these requirements, EPA published the Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR) for Public Water Systems on September 17, 1999, (64 FR 50556) which substantially revised the previous Unregulated Contaminant Monitoring (UCM) Program, codified at 40 CFR 141.40. The UCMR revised the regulations at 40 CFR 141.35, 141.40, 142.16 and deleted and reserved 142.15(c)(3). The UCMR covered: (1) The frequency and schedule for monitoring, based on PWS size, water source, and likelihood of finding contaminants; (2) a new, shorter list of contaminants for which systems will monitor, referred to as the UCMR (1999) List; (3) procedures for selecting and monitoring a nationally representative sample of small PWSs (those serving

10,000 or fewer persons), and; (4) procedures for entering the monitoring data in the National Drinking Water Contaminant Occurrence Database (NCOD), as required under section 1445. This final rule included a list of contaminants which must be monitored beginning January 2001 to obtain data on contaminants occurring or likely to occur in the drinking water of public water systems.

Perchlorate and acetochlor were included on the UCMR (1999) List 1, with their analytical methods listed as ''reserved'', pending the imminent conclusion of EPA refinement and review of the analytical methods and implementation of a laboratory approval for perchlorate and validation studies for acetochlor. Today's rule amends the 1999 UCMR to specify methods for monitoring of perchlorate and acetochlor. Today's rule also contains several technical corrections to the September 1999 rule.

II. Explanation of Today's Action

Today's action promulgates analytical methods for measurement of perchlorate and acetochlor in drinking water, contaminants which were placed on the UCMR (1999) List 1.

A. Relation to the UCMR Published in September 1999

The final UCMR, published on September 17, 1999, consisted of many program elements designed to enhance and improve the unregulated contaminant monitoring program in several important ways. The rule specifies (1) which systems must monitor, including a statistical approach to select a representative sample of small public water systems; (2) a list of contaminants for which systems must monitor; (3) the monitoring time, frequency, and location of sampling; (4) methods to be used for analyzing the contaminants; (5) reporting requirements; and (6) State and Tribal participation concerning the implementation of the monitoring program.

EPA divided the list of contaminants for which systems must monitor into three separate lists based on the availability of analytical methods. List 1, Assessment Monitoring, consisted of 12 contaminants for which analytical methods were available at the time the rule was promulgated, with the exception of perchlorate and acetochlor. List 2, Screening Survey, consisted of 16 contaminants for which analytical methods are expected to be developed by the time of initial monitoring in 2001. List 3, Pre-Screen Testing, consisted of 8 contaminants for which analytical methods research is being conducted. Only the contaminants on List 1 must be monitored at all 2,774 large community and non-transient non-community public water systems serving more than 10,000 persons and at a representative sample of approximately 800 systems serving 10,000 or fewer persons. EPA believed that this three-tiered approach to the UCMR, which was recommended by stakeholders, reflected a balance between the implementability of current analytical methods and the need to obtain data in time frames that are useful for responding to concerns about the contaminants identified.

Although methods were not available at the time of publication, perchlorate and acetochlor were both included on List 1, Assessment Monitoring, because EPA was engaged in the final validation of their analytical methods. EPA felt that, with the validation, the analytical methods would be sufficiently ready for monitoring by 2001. Therefore, these contaminants were added to List 1, Assessment Monitoring. Today's rule publishes the analytical methods, minimum reporting levels, and sampling locations for perchlorate and acetochlor. This rule will enable monitoring of these contaminants to begin with all the other List 1, Assessment Monitoring contaminants in 2001.

As required in the September 1999 UCMR, surface water systems will monitor for perchlorate and acetochlor quarterly for one year and ground water systems will monitor twice in one year. Assessment Monitoring must be done within the three years of 2001 to 2003, which will allow coordination with the three-year compliance monitoring cycle for regulated contaminants. One of these quarterly or semiannual sampling events must occur in the most vulnerable period of May through July, or an alternate vulnerable period designated by the State, to ensure monitoring of elevated contaminant concentrations.

B. Systems Affected by This Rule

The UCMR states that monitoring in the rule focuses on the occurrence or likely occurrence of contaminants in drinking water of community and non-transient, non-community water systems. For regulatory purposes, public water systems are categorized as ''community water systems'' or ''non-community water systems''. Community water systems are specifically defined as ''public water systems which serve at least 15 service connections used by year-round residents or regularly serve at least 25 year round residents.'' (40 CFR 141.2) A ''non-community water system'' means any other public water system. Non-community water systems include non-transient non-community water systems and transient non-community water systems. Non-transient non-community systems are those that regularly serve at least 25 of the same persons over 6 months per year (*e.g.,* schools, industrial buildings). Transient systems are all other non-community systems, which typically serve a transient population such as restaurants or hotels. In the September 1999 UCMR, EPA excluded transient water systems from this monitoring. The variation in the 97,000 transient systems would be difficult to reflect in a national representative sample and would be very costly to monitor. The results from the very small community and non-transient non-community systems can be extrapolated to the transient non-community systems.

With respect to size, about 2,800 large systems (defined here as those serving more than 10,000 persons) provide drinking water to about 80 percent of the US population served by public water systems. The SDWA does not provide for EPA funding of this monitoring. Under the UCMR program all large systems will be required to monitor for unregulated contaminants. Only a representative sample of systems serving 10,000 persons or fewer will be required to monitor for unregulated contaminants. SDWA requires EPA to pay for the reasonable testing costs for the representative sample of small systems.

C. Analytical Methods

1. Perchlorate. In today's rule, EPA is amending the September 1999 UCMR to include EPA Method 314.0 ''Determination of Perchlorate in Drinking Water Using Ion Chromatography, Revision 1 (November 1999)'' for the analysis of perchlorate. In this method, perchlorate is separated and measured, using a system comprised of an ion chromatographic pump, sample injection valve, guard column, analytical column, suppressor device, and conductivity detector. This method recommends an ion chromatography (IC) column and analytical conditions which were determined to be the most effective for the widest array of sample matrices.

The development of Method 314.0 included investigations into the performance of alternate 4 millimeter IC guard and analytical separator columns which are specified for the IC analysis of perchlorate specified by the California Department of Health Services and also by Dionex

Corporation. These alternate guard /separator columns included the Dionex AG5/AS5 and the Dionex AG11/AS11, respectively. The AG5/AS5 is currently specified in the standard operating procedure (SOP) for the IC analysis of perchlorate written by the State of California, Department of Health Services. The AG5/AS5 is a hydrophilic analytical column which was developed several years ago for higher valence anions such as tripolyphosphate and trimetaphosphate as well as polarizable anions such as iodide, thiocyanate and thiosulfate. The AG11/AS11 is used by several commercial laboratories conducting IC analysis for perchlorate and is recognized by California as an acceptable alternate to the AG5/AS5. A multi-laboratory validation study included both of these analytical columns and indicated comparable results could be attained. In the Agency's studies, both the AG5/AS5 and the AG11/AS11 performed well for reagent water and simulated drinking water samples with low to moderate common anion levels, such as sulfate, chloride and carbonate, but as these levels increased, performance began to diminish for both columns. The more recently developed AG16/AS16 columns could tolerate much higher levels of these anions and are therefore recommended in Method 314.0 as the columns of choice although alternate columns such as the AS5 and AS11 are permitted to be used.

The Agency's primary reason for publishing Method 314.0 instead of simply approving the published SOPs was the impact of high concentrations of total dissolved solids (TDS); primarily sulfate, carbonate, and chloride on the accuracy of perchlorate determinations. Neither the California Department of Health Services nor the Dionex Corporation method incorporate a quality control element to assess the impact of high concentrations of TDS. Sample matrices with high concentrations of common anions such as chloride, sulfate and carbonate can make the analysis problematic by destabilizing the baseline in the retention time window for perchlorate. This is evidenced by observing a protracted tailing following the initial elution of the more weakly retained anions which extends into the perchlorate retention time window. These common anion levels can be indirectly assessed by monitoring the conductivity of the matrix. Consequently, Method 314.0 specifies that all sample matrices must be monitored for conductivity prior to analysis. When the laboratory determined Matrix Conductivity Threshold (MCT) is exceeded, procedures incorporating sample dilution and/or pretreatment must be performed.

The columns and conditions identified in Method 314.0 are recommended since they bear the highest tolerance for the very highest levels of common inorganic anions interference; however, use of the columns and conditions recommended in other ion chromatographic methods for the analyses of perchlorate are also permitted as long as they meet the performance criteria specified in Method 314.0.

In addition to recommending the AG16/AS16 column used in Method 314.0, the primary advantages of Method 314.0 are the requirements associated with determining the matrix conductivity threshold (MCT) and reducing the impact of TDS on the accuracy of perchlorate determinations. The MCT is the highest permitted conductance of an unknown sample matrix, measured prior to conducting the analysis, which is used to determine when sample matrix dilution or pretreatment is required. The conductance of a sample matrix is proportional to the common anions present in the matrix (which contribute to the TDS level) which can greatly affect the integrity of this analysis. The MCT is dependent upon the chromatographic column used, its age and condition, the instruments used, and the analyst. Consequently, this threshold is not method defined and must be determined by the individual analytical laboratory during the initial demonstration of capability and confirmed in each analysis batch using an instrument performance check solution. At EPA's laboratory the MCTs determined varied from approximately 3000 microsiemens per centimeter (uS/cm) for the AS5 and AS11 columns to approximately 6000 uS/cm for the AS16 column. Instructions on how to determine a laboratory's MCT are included in EPA Method 314.

Both pretreatment cartridges and, in some cases, sample dilution can be effective as a means to eliminate or minimize the impact of certain matrix interferences. With any proposed pretreatment, Method 314.0 specifies that the analyst must verify that the target analyte is not affected by monitoring recovery after pretreatment and that no background contaminants are introduced by the pretreatment. Use of advanced analytical separator column technology which employs higher capacity anion exchange resins, such as the AG16/AS16 which is recommended in Method 314.0, greatly reduces the need for these cartridges.

2. Acetochlor. Several commenters on the proposed UCMR revisions asserted that acetochlor could be reliably measured using EPA Method 525.2. At the time that EPA issued the final UCMR, EPA did not have available the laboratory data necessary to support those assertions. In addition, no data were available concerning the sample and extract storage stability of acetochlor when stored under the preservation conditions specified in EPA Method 525.2. Since that time, EPA has obtained those data necessary to support approval of EPA Method 525.2 for the analysis of acetochlor. Today's rule, therefore, amends the September 1999 UCMR to specify this method for acetochlor analysis.

3. Quality Control and Analytical Confirmation. Additional guidance for quality control and analytical confirmation are specified in a supplement to the ''Supplement to UCMR Analytical Methods and Quality Control Manual'', available by the time this rule is published.

D. Peer Review

EPA conducted two separate peer reviews, one for the perchlorate method and the other to determine if acetochlor could be added to EPA Method 525.2. The results of the peer review are summarized here:

1. Perchlorate. The peer review for EPA Method 314.0 was conducted in early November 1999 by three experts, external to the EPA and familiar with perchlorate issues, occurrence, and monitoring. All three peer reviewers concluded the method was ''acceptable after minor revision''. The majority of comments were editorial, requiring either typographical editing or further text clarification and explanation. All reviewers provided either verbal or written support for including the MCT as a quality control parameter used to monitor matrix conductance as it relates to reducing interference problems associated with high TDS levels.

2. Acetochlor. In November 1999, EPA provided peer reviewers with a memorandum titled ''Documentation of Agency Decisions Concerning the Analyses of Acetochlor in the Unregulated Contaminant Monitoring Regulation''. This memorandum detailed the minimum detection level, precision and accuracy, analyte stability, and current health effects information that was used in the decision to approve EPA Method 525.2 for the analysis of acetochlor in the UCMR, and to set the Minimum Reporting Level (MRL) at 2 ug/L. This

memorandum was reviewed by three methods experts external to the Agency, with one reviewer representing a State and the other two reviewers representing drinking water utilities. All three were supportive of the Agency's decision to approve EPA Method 525.2 for the analysis of acetochlor, and with the decision to set the MRL at 2 ug/L.

Reports of these peer reviews and our responses to their comments are in the docket referred to above under **ADDRESSES.**

E. Laboratory Approval and Certification

1. Perchlorate. In order to allow data on perchlorate occurrence in PWSs that were obtained prior to January 2001 to be grandparented, the data must meet the reporting requirements of the UCMR which include the successful completion of the perchlorate PT Program by a laboratory approved to perform the original analyses. Approximately 2,800 large PWSs that serve more than 10,000 persons will be required to monitor for perchlorate using an approved laboratory. For the small PWSs serving 10,000 or fewer persons, EPA will contract with an approved laboratory for perchlorate laboratory analysis.

Since this rule specifies the approved analytical method for analyses of perchlorate and is a new method which includes matrix specific quality control criteria, laboratories must go through a separate approval process to test for perchlorate. Laboratories certified under 40 CFR 141.28 for compliance analysis using the EPA analytical methods specified in the UCMR (1999) List, whether the laboratory uses EPA or non-EPA analytical methods on the List, are automatically certified to do analyses of UCMR List 1 contaminants using the listed methods for which it is certified, with the exception of perchlorate.

Those laboratories interested in performing perchlorate testing must be previously certified (by the primacy agency in the State where the laboratory is located) to conduct laboratory analysis supporting regulatory compliance monitoring of drinking water for any inorganic anion using an approved ion chromatographic method (such as nitrate analysis by EPA Method 300.0). In addition, the laboratory must successfully complete the perchlorate Performance Testing (PT) Program. This PT Program involves a blind control study, using a test sample with an unknown value.

Any laboratory, wishing to participate in the perchlorate PT Program and obtain approval, must submit a letter requesting this information to EPA, received no later than March 31, 2000. Any interested laboratory which does not meet this deadline or fails to successfully pass this initial PT study and still wishes to support this monitoring, will need to submit a request letter by October 6, 2000 in order to be eligible for a second PT study. EPA will not be able to consider any laboratory request letters received after October 6, 2000 and does not intend to conduct any additional PT studies. Any laboratory gaining approval in the first PT study will not be required to participate in the second PT study. These will be the only two PT studies offered for laboratories wishing to gain approval to conduct perchlorate analysis in support of UCMR assessment monitoring. Any laboratory which does not request participation by October 6, 2000 and fails to pass either of these two PT studies will not be approved to support this perchlorate monitoring. The submitted request letter must be signed by the laboratory manager with a statement that the laboratory is currently certified, by the primacy agency in which the laboratory is located, to perform drinking water compliance monitoring using an approved ion chromatographic method. A copy of the letter or certificate issued by the State or primacy agency detailing this certification must also be submitted. Details pertaining to laboratory certification can be found on-line at www.epa.gov/OGWDW/labcint.html.

A laboratory's request letter must include the following information:

(1) Laboratory Name.

(2) Complete Laboratory Mailing Address.

(3) Ion chromatography analytical method the laboratory is certified to perform.

(4) A copy of the letter or certificate issued by the State or primacy agency which issued the certification to the laboratory.

(5) Contact Person.

(6) Contact Phone, FAX, and e-mail (if available).

The letter should be mailed to: Perchlorate PT Program Coordinator, U.S.EPA, MLK 140, 26 W. Martin Luther King Dr., Cincinnati, Ohio 45268.

To participate successfully in this program the laboratory will also need to become proficient in the application of U.S. EPA Method 314.0, ''Determination of Perchlorate in Drinking Water Using Ion Chromatography''. Laboratories must follow the procedure as well as all the QC protocols prescribed in the method. To obtain a copy of EPA Method 314.0, contact the Safe Drinking Water Hotline at 1–800–426–4791 or access an electronic copy of the method directly on-line at *www.epa.gov/safewater/methods/sourcalt.html.*

Upon successful completion of the perchlorate PT Program, EPA will provide each successful laboratory with an approval letter identifying the laboratory by name and the approval date. This letter may then be presented to any Public Water System (PWS) as evidence of laboratory approval for perchlorate analysis supporting the UCMR. Laboratory approval is retained as long as the laboratory maintains certification by the State or primacy agency in which the laboratory is located, to perform drinking water compliance monitoring using an approved ion chromatographic method. If a laboratory maintains this certification, the laboratory approval for perchlorate analysis supporting the UCMR will be limited to the time period beginning on the date specified in the EPA issued approval letter and extending through January 28, 2004. Additionally, EPA will establish a website indicating which laboratories are approved to conduct perchlorate monitoring.

2. Acetochlor. No performance testing sample analyses are required for laboratory approval for the analysis of acetochlor under the UCMR. All laboratories currently certified to perform drinking water compliance monitoring using EPA Method 525.2 are automatically approved to perform acetochlor analysis in the UCMR.

F. Implementation

Implementation of this rule will allow monitoring for perchlorate and acetochlor using the specified methods in this rule. Systems will follow the monitoring requirements described in the September 1999 UCMR at the designated sampling location four times a year for surface water systems, or two times six months apart for ground water systems, with one of the sampling times during the May-July vulnerable time, or an alternate vulnerable period specified by the State.

G. Performance-based Measurement System

EPA's Office of Water plans to implement a performance-based measurement system (PBMS) that would allow the option of using either performance criteria or reference methods in its drinking water regulatory programs, removing the requirement that only EPA-specified and approved analytical methods be used in SDWA regulatory programs. The requirement to use approved methods for SDWA

regulatory programs would, however, be maintained for certain method-defined analytes (*e.g.,* Total Coliform and asbestos), and for data gathering prospective to regulation, such as the contaminant monitoring in this rule.

As noted above, many of the contaminants of interest for the Unregulated Contaminant Monitoring (UCM) program can be classified as ''emerging'and thus do not have existing performance criteria or reference methods. In addition to collecting information about contaminant occurrence, the UCM program will enable the development of reference methods and performance criteria. UCM testing will provide data to assist the Agency in developing performance criteria that would be proposed with the MCL, monitoring requirements, etc. for an analyte. For these reasons, the Agency is specifying the method to be used for UCM testing. Once, however, a contaminant proceeds to regulation development as a National Primary Drinking Water Regulation, EPA expects to have sufficient data and method development information to be able to propose both performance criteria and a validated reference method, either of which could be used for compliance monitoring of the contaminant.

III. Technical Changes and Clarification to § 141.40

After reviewing the UCMR subsequent to its publication in the *Federal Register* on September 17, 1999, EPA found five changes that should be made to correct or clarify the wording of the regulation. These changes are at § 141.40 (a)(5)(ii)(C), (a)(5)(iii)(G), (b)(1)(i), and (b)(1)(vii) and described here.

A. Change to § 141.40 (a)(5)(ii)(C)

This paragraph describes the location at which unregulated contaminant monitoring is to occur. However, the paragraph provides an exception where a State determines that no treatment is instituted between the source water and the distribution system that would affect measurement of the contaminants listed in § 141.40 (a)(3). EPA is correcting this provision to delete redundant wording that does not help to clarify the exception.

B. Change to § 141.40 (a)(5)(ii)(G)

This paragraph describes the requirements for testing of the contaminants listed in § 141.40 (a)(3) by a certified laboratory. This paragraph states that laboratories certified to conduct compliance analysis using EPA analytical methods in column 3, § 141.40 (a)(3), may conduct analyses for the UCMR contaminants. EPA is adding a paragraph to address laboratory approval to analyze for perchlorate in drinking water samples.

C. Change to § 141.40 (a)(5)(iii)(G)

This paragraph specifies that sampling forms must be completed by owners or operators of small systems conducting the sampling for unregulated contaminants before sending the results to the EPA designated laboratory. The data elements that the owner or operator must complete are incorrectly specified as 1 through 6. The rule corrects the language to identify the data elements to be 1 through 4: Public Water System Identification Number; Public Water System Facility Identification Number—Source, Treatment Plant, and Sampling Point; Sample Collection Date; and Sample Identification Number.

The rule also corrects the reporting for small systems to include data elements 5 through 10 if water quality parameters are required to be reported from the field. These parameters include: Contaminant/Parameter; Analytical Results-sign; Analytical Results-Value; Analytical Result-Unit of Measure; Analytical Method Number; and Sample Analysis Type. This clarification makes this section consistent with § 141.40 (a)(4)(i)(B) which applies to all systems analyzing for water quality parameters.

D. Change to § 141.40 (b)(1)(i)

This paragraph describes the process for States and Tribes to accept or modify the State Monitoring Plans for small systems. The paragraph incorrectly refers to ''distribution line.'' This reference should be to a ''distribution system'' to be consistent with other sections of and the intent of the rule.

E. Change to § 141.40 (b)(1)(vii)

This paragraph describes the process for a State or Tribe to participate in monitoring for the Screening Surveys for small and large systems. This paragraph contains an exclusion for systems purchasing water (unless the system is to conduct microbiological contaminant monitoring)[emphasis added]. The intent of the exception identified in the parenthetical phrase ''unless the system is to conduct microbiological monitoring'' was to address any contaminants for which the distribution system should be the appropriate location for monitoring, not just microbiological contaminants. The reference to microbiological contaminant monitoring is an artifact of a previous draft of the rule which was not corrected. Today's rule provides the intended wording and allows the exclusion of certain systems ''(unless the system is to conduct monitoring for a contaminant with the sampling location specified as the ''distribution system'').''

F. Clarification of Monitoring for DCPA Mono and Di-Acid Degradate

In the September 17, 1999, **Federal Register** (64 FR 50556), EPA included as separate contaminants both DCPA mono-acid and DCPA di-acid degradates on the UCMR (1999) Monitoring List. As noted in the ''UCMR Analytical Methods and Quality Control Manual,'' August 1999, all of the approved methods identify total mono and di-acid forms as a single analytical result. None of the approved methods allow for the identification and quantification of the individual acids. To provide for the consistent reporting of results and to avoid confusion, EPA is specifying in Table 1 of § 141.40 (UCMR List 1, 1999) that the single analytical result obtained from these methods should be reported as total DCPA mono- and di-acid degradates.

IV. Cost and Benefits of the Rule

Today's amendment to the UCMR (64 FR 50555) adds methods for monitoring perchlorate and acetochlor to the UCMR (1999) List 1. These contaminants will be collected as part of the Assessment Monitoring component of the UCMR program. Perchlorate and acetochlor were part of the original UCMR (1999) List 1 contaminants, but were withheld from the September 1999 Final Rule pending finalization of their analytical methods. As described elsewhere in this Preamble, Assessment Monitoring will be conducted over a 3-year period from 2001 to 2003 by all 2,774 large PWSs and a randomly selected representative sample of 800 small systems.

Since perchlorate and acetochlor will be analyzed by laboratories using water samples that are collected at the same time as the other 10 Assessment Monitoring contaminants, there are no additional labor costs related to today's addition of these contaminants. Systems will only be required to collect one additional sample for perchlorate analysis at the same sampling point where they are collecting the other Assessment Monitoring samples. No measurable added labor burden is associated with filling one more sample bottle. Additional non-labor costs are solely attributed to the laboratory fees/costs associated with analyzing samples for these contaminants. These costs will only be incurred by EPA and by large PWSs. No additional shipping costs will be incurred, since the weight of one sample bottle will not increase the shipment pricing category.

EPA assumes that no additional costs will be incurred for analysis of acetochlor, since this contaminant will be analyzed under method 525.2, along with 2,4-dinitrotoluene and 2,6-dinitrotoluene. EPA estimates that the average laboratory fee/cost for perchlorate analysis, using the ion chromotography Method 314.0 will be $60 per sample. The additional costs for laboratory analysis are calculated as follows: the product of the number of systems and the number of entry or sampling points is multiplied by the sampling frequency and then multiplied by the cost of analysis.

The details of EPA's cost assumptions and estimates for Assessment Monitoring contaminants, with the exception of perchlorate and acetochlor, can be found in the Information Collection Request (ICR) previously prepared for the UCMR (OMB number 2040–0208), which presents estimated cost and burden for the 1999–2001 period. The Office of Management and Budget (OMB) approved the ICR on June 30, 1999. An inventory correction worksheet (ICW) was prepared for this rule to address the hours and dollars associated with monitoring and analyzing for perchlorate and acetochlor. Copies of the ICR may be obtained from Sandy Farmer by mail at: OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at: farmer.sandy@epa.gov, or by calling: (202) 260–2740. For technical information regarding the ICR, please contact Chuck Job, U.S. Environmental Protection Agency, (4607); 401 M St., S.W.; Washington DC 20460, by email at: *job.charles@epa.gov,* or by calling (202) 260–7084. A copy may also be downloaded from the Internet at: http://www.epa.gov/icr.

In preparing the UCMR ICR and the ICW, EPA relied on standard assumptions and data sources used in the preparation of other drinking water program ICRs. These include the public water system inventory, number of entry points per system, and labor rates. To estimate the labor burden for State and some system activities, the Agency used its standard State Resource Model, which is documented in the Resource Analysis Computer Program for State Drinking Water Agencies (January 1993). Other assumptions are discussed below.

Over the UCMR implementation period of 2001 through 2005, EPA estimates that the average annual cost of the nationwide addition of perchlorate and acetochlor to Assessment Monitoring is approximately $560,700, as follows:

1. EPA: $70,200, exclusively for the additional testing costs for small systems.
2. States: $0.
3. Small systems: $0.
4. Large systems: $490,500.

The estimated average annual cost is approximately $177 per large system.

V. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this Rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''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 Executive Order 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 Executive Order 13045 because it is not ''economically significant'' as defined under Executive Order 12866. Further, this rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule makes purely clarifying changes to the September 1999 UCMR and establishes analytical test methods for measurement of the unregulated contaminants perchlorate and acetochlor.

However, this Rule is part of the Agency's overall strategy for deciding whether to regulate the contaminants under the Safe Drinking Water Act (see discussion of the Contaminant Candidate List (CCL) at 63 FR 10273). Its purpose is to ensure that EPA obtains data on the occurrence of contaminants on the CCL—specifically perchlorate and acetochlor—where those data are currently lacking. EPA is also taking steps to ensure that the Agency will have data on the health effects of these contaminants on children through its research program. The Agency will use these occurrence and health effects data to decide whether to regulate these contaminants.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal

governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any one year. Total annual costs of today's rule (across the implementation period of 2001–2005), for State, local, and tribal governments and the private sector, are estimated to be $560,700, of which EPA will pay $70,200, or approximately 12 percent. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because EPA will pay for the reasonable costs of sample testing for the small PWSs required to sample and test for unregulated contaminants under this rule, including those owned and operated by small governments. Small systems will incur minimal additional labor or non-labor costs as a result of this rule, since laboratory analysis of perchlorate and acetochlor will be conducted using samples that systems were already collecting under the September 1999 UCMR. Thus, today's rule is not subject to the requirements of UMRA section 203.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0208. As part of the September 1999 UCMR, the information to be collected under today's Rule fulfills the statutory requirements of section 1445(a)(2) of the Safe Drinking Water Act, as amended in 1996. The data to be collected will describe the source water, location, and test results for samples taken from PWSs. The concentrations of any identified UCMR contaminants will be evaluated regarding health effects and will be considered for future regulation accordingly. Reporting is mandatory. The data are not subject to confidentiality protection.

For a discussion of the costs for the full monitoring program from 2001 through 2005, please refer to Section V., ''Costs and Benefits of the Rule'' in the preamble. EPA has an approved ICR for the 10 UCMR Assessment Monitoring contaminants and is in the process of processing the ICW for the addition of perchlorate and acetochlor methods to the UCMR. This discussion focuses on the estimated costs during the ICR period of 1999–2001.

The cost estimates described below for the additional contaminants, perchlorate and acetochlor, are solely attributed to additional laboratory fees/costs. No additional labor or hour burden will be incurred because of the addition of these contaminants to the UCMR (1999) List 1. For Assessment Monitoring, the respondents are the 800 small water systems (in the national representative sample of systems serving 10,000 or fewer people), the 2,774 large public water systems, and the 56 States and primacy agents (3,630 total respondents). The frequency of response varies across respondents and years. However, there are no additional responses associated with this rule amendment, and thus no additional hour burden for any respondents. Minimal additional costs will be incurred by small systems or States. Large systems and EPA will incur the additional laboratory fees/costs for the analysis of perchlorate and acetochlor. For the three year ICR period only, each large system respondent will incur an annual average additional cost of $295. This was calculated by the average cost per system over three years. [E.g., ($884 per large system) divided by three years]. The additional cost for perchlorate and acetochlor is estimated to be $300 per response by a large system. This is calculated by the average cost per system over the three years [E.g., ($884 per large system) divided by the average number of responses per system over the entire three year period (2.9 per large system)].

EPA will incur no additional labor or hour costs for implementation of today's rule. EPA's annual non-labor costs (for the ICR period 1999–2001) are estimated to be $36,400 for the analysis of small system perchlorate and acetochlor Assessment Monitoring samples. Non-labor costs are solely attributed to the cost of sample testing for the 800 small systems.

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 aintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on all three categories of small entities, EPA considered small entities to be systems serving 10,000 or fewer customers because this is the size of system specified in SDWA as requiring special consideration with respect to small system flexibility. In accordance with the RFA requirements, EPA proposed using this alternative definition for all three categories of small entities in the **Federal Register**, (63 FR 7605, February 13, 1998) requested public comment, consulted with SBA regarding the alternative definition as it relates to small

businesses, and finalized the alternative definition in the Consumer Confidence Reports rulemaking, (63 FR 44511, August 19,1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

For the UCMR, published on September 17, 1999, EPA analyzed separately the impact on small privately and publicly owned water systems because of the different economic characteristics of these ownership types. For publicly owned systems, EPA used the ''revenue test,'' which compares a system's annual costs attributed to the rule with the system's annual revenues. EPA used a ''sales test'' for privately owned systems, which involves the analogous comparison of UCMR-related costs to a privately owned system's sales. EPA assumes that the distribution of the national representative sample of small systems will reflect the proportions of publicly and privately owned systems in the national inventory. The estimated distribution of the representative sample, categorized by ownership type, source water, and system size, is presented below in Table 1.

TABLE 1.—NUMBER OF PUBLICLY AND PRIVATELY OWNED SYSTEMS TO PARTICIPATE IN ASSESSMENT MONITORING

[Including perchlorate and acetochlor]

Size category	Publicly owned systems		Privately owned systems		Total—All systems
	Non-index systems	Index systems	Non-index systems	Index systems	
Ground Water Systems					
500 and under	20	1	76	2	99
501 to 3,300	146	6	67	3	222
3,301 to 10,000	144	7	40	2	193
Subtotal ground	310	14	183	7	514
Surface Water Systems					
500 and under	18	0	49	0	67
501 to 3,300	51	2	23	1	77
3,301 to 10,000	106	5	30	1	142
Subtotal surface	175	7	102	2	286
Total	485	21	285	9	800

The basis for the UCMR RFA certification for today's rule, which adds perchlorate and acetochlor to the Assessment Monitoring program, is as follows: the average annual compliance costs of the rule represent less than 1 percent of revenues/sales for the 800 small water systems that will be affected. The EPA estimates that EPA and small system costs for adding perchlorate and acetochlor to the Assessment Monitoring program (2001–2005) will be approximately $350,890. Since the Agency specifically structured the rule to avoid significantly affecting small entities by assuming all costs for laboratory analyses, shipping, and quality control for small entities, EPA incurs the entirety of the costs associated with adding methods for monitoring perchlorate and acetochlor to the Assessment Monitoring list. Table 2 presents the annual costs to EPA for the small system sampling program, along with the number of participating small systems during each of the 5 years of the program. The table also illustrates that no additional costs are incurred by the small systems.

TABLE 2.—EPA COSTS FOR SMALL SYSTEMS FOR THE ADDITION OF PERCHLORATE AND ACETOCHLOR METHODS TO UCMR ASSESSMENT MONITORING

Cost description	2001	2002	2003	2004	2005	Total
Total Costs to EPA for Small System Sampling of Perchlorate and Acetochlor: analytical costs						
	$109,150	$109,150	$109,150	$11,720	$11,720	$350,890
Costs to Small Systems: no additional labor or non-labor costs incurred						
	$0	$0	$0	$0	$0	$0
Total Costs to EPA and Small Systems for UCMR						
	$109,150	$109,150	$109,150	$11,720	$11,720	$350,890
Number of Systems to be conducting Assessment Monitoring each Year (thus collecting perchlorate and acetochlor samples): Non-Index and Index in 2001–2003, Index only in 2004–2005[1]						
Public	182	182	182	107	21	533
Private	104	104	104	81	9	267
Total	286	286	286	188	30	800

[1] Total number of systems is 800. All 30 Index systems sample during each year 2001–005. One-third of Non-Index systems sample during each year from 2001–2003. The rows do not add across, because the same 30 Index systems sample during every year of 5-year implementation cycle.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that the addition of perchlorate and acetochlor to the UCMR data collection will not affect small water utilities. The rationale for this conclusion is that those 800 small PWSs that will participate in Assessment Monitoring will not be required to conduct additional activities related to this rule. Further, EPA will assume all additional costs for testing of the samples for small systems. We have therefore concluded that today's final rule will impose no regulatory burden for small entities. Also, the minor amendments to the UCMR are purely for clarification or correction, and do not impose any costs.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA searched for but did not find any voluntary consensus standards for the measurement of acetochlor or perchlorate. Analytical methods for perchlorate have been published by the California Department of Health and by Dionex Corporation, however neither of these methods incorporates a quality control element which assesses the impact of high concentrations of total dissolved solids (TDS), frequently present in water samples. The presence of these high TDS in samples can result in inaccurate quantitation of perchlorate or may even mask its presence. Therefore, EPA developed EPA Method 314.0 for the analysis of perchlorate which incorporates a quality control element that both identifies the presence of high concentrations of TDS and provides a mechanism to reduce their concentrations, thereby permitting accurate quantitation of perchlorate. In addition, EPA's Method 314.0 permits the use of both the California Department of Health and the Dionex procedures within its scope; therefore, laboratories currently using either of these procedures can convert to using EPA Method 314.0 simply by adopting the quality control element specified in EPA Method 314.0 without needing to change any other aspects of their analyses.

G. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations' (February 11, 1994), focuses federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities. By seeking to identify unregulated contaminants that may pose health risks via drinking water from all PWSs, this regulation furthers the protection of public health for all citizens, including minority and low-income populations using public water supplies.

H. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely specifies the analytical methods approved for the measurement of perchlorate and acetochlor in drinking water, thereby allowing these contaminants to be included in the UCMR Assessment Monitoring program and makes other minor corrections to the September UCMR. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, 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, Executive Order 13084 requires EPA to develop an effective process permitting elected officials 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 nor does it impose substantial direct compliance costs on them. Only one tribal water system serves more than 10,000 persons. All the other tribal water systems serve 10,000 or fewer persons, and in today's rule have an equal probability of being selected in the national representative sample of small systems, for which EPA will pay the costs of unregulated contaminant testing. Thus, these tribal water systems will be treated the same as water systems of a State and the impact of the rule on them will not be significant.

This rule will not impose substantial direct compliance costs on such communities because, with the exception of the one large tribal water system, the Federal government will provide most of the funds necessary to pay the direct costs incurred by tribal governments in complying with the rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Administrative Procedure Act

EPA is publishing this methods rule without prior proposal because it views this as a noncontroversial amendment and anticipates no adverse comment. While developing these methods, EPA worked closely with those people involved in similar work or developing similar methods. For perchlorate, Method 314.0 is an adaptation of the current methods available to test for perchlorate, but with additional QC requirements. For the UCMR, public comment indicated that EPA Method 525.2 could perform analyses for acetochlor. However, elsewhere in this issue of the **Federal Register**, EPA is publishing a separate document that will serve as the proposal for the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods for Perchlorate and Acetochlor if adverse comments are filed. This rule will be effective on January 1, 2001, without further notice unless EPA receives adverse comment by April 3, 2000. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Finally, the minor amendments made to the September 1999 UCMR in today's rule are purely clarifying changes and thus public comment is unnecessary under the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

K. Congressional Review Act

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by U.S.C. 804(2). This rule will be effective January 1, 2001.

VI. Public Involvement in Regulation Development

EPA's Office of Ground Water and Drinking Water has developed a process for stakeholder involvement in its regulatory activities to provide early input to regulation development. Today's rule amends the September 1999 UCMR, by establishing the method requirements for perchlorate and acetochlor. At the time of UCMR publication—September 1999—the methods for these contaminants were still under review by the EPA. For a description of public involvement activities please see the discussion at 64 FR 50556.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: February 23, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of Code of Federal Regulations, are amended as follows.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–l, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Effective January 1, 2001 § 141.40 as revised on 9/17/99 (64 FR 50556) and effective January 1, 2001 is further amended by:

a. Revising Table 1, List 1, in paragraph (a)(3) and revising the column heading notations and footnotes at the end of paragraph (a)(3);

b. Revising paragraphs (a)(5)(ii)(C) and (a)(5)(ii)(G);

c. Revising paragraph (a)(5)(iii)(G);

d. Revising paragraph (b)(1)(i); and

e. Revising paragraph (b)(1)(vii).

The Revisions read as follows:

§ 141.40 Monitoring requirements for unregulated contaminants.

(a) * * *

(3) * * *

TABLE 1.—UNREGULATED CONTAMINANT MONITORING REGULATION (1999) LIST

[List 1—Assessment Monitoring Chemical Contaminants]

1—Contaminant	2—CAS registry number	3—Analytical methods	4—Minimum reporting level	5—Sampling location	6—Period during which monitoring to be completed
2,4-dinitrotoluene	121–14–2	EPA 525.2 [a]	2 ug/L [e]	EPTDS [f]	2001–2003
2,6-dinitrotoluene	606–20–2	EPA 525.2 [a]	2 ug/L [e]	EPTDS [f]	2001–2003
Acetochlor	34256–82–1	EPA 525.2 [a]	2 ug/L [o]	EPTDS [f]	2001–2003
DCPA mono-acid degradate [n]	887–54–7	EPA 515.1 [a] EPA 515.2 [a] D5317–93 [b] AOAC 992.32 [c]	1 ug/L [e]	EPTDS [f]	2001–2003
DCPA di-acid degradate [n]	2136–79–0	EPA 515.1 [a] EPA 515.2 [a] D5317–93 [b] AOAC 992.32 [c]	1 ug/L [e]	EPTDS [f]	2001–2003
4,4′-DDE	72–55–9	EPA 508 [a] EPA 508.1 [a] EPA 525.2 [a] D5812–96 [b] AOAC 990.06 [c]	0.8 ug/L [e]	EPTDS [f]	2001–2003
EPTC	759–94–4	EPA 507 [a] EPA 525.2 [a] D5475–93 [b] AOAC 991.07 [c]	1 ug/L [e]	EPTDS [f]	2001–2003
Molinate	2212–67–1	EPA 507 [a] EPA 525.2 [a] D5475–93 [b] AOAC 991.07 [c]	0.9 ug/L [e]	EPTDS [f]	2001–2003
MTBE	1634–04–4	EPA 524.2 [a] D5790–95 [b] SM 6210D [d] SM 6200B [d]	5 ug/L [g]	EPTDS [f]	2001–2003
Nitrobenzene	98–95–3	EPA 524.2 [a] D5790–95 [b] SM6210D [d] SM6200B [d]	10 ug/L [g]	EPTDS [f]	2001–2003
Perchlorate	14797–73–0	EPA 314.0	4 ug/L [o]	EPTDS [f]	2001–2003
Terbacil	5902–51–2	EPA 507 [a] EPA 525.2 [a] D5475–93 [b] AOAC 991.07 [c]	2 ug/L [e]	EPTDS [f]	2001–2003
* * *	*	*	*	*	*

Column headings are:

1—Chemical or microbiological contaminant: the name of the contaminants to be analyzed.

2—CAS (Chemical Abstract Service Number) Registry No. or Identification Number: a unique number identifying the chemical contaminants.

3—Analytical Methods: method numbers identifying the methods that must be used to test the contaminants.

4—Minimum Reporting Level: the value and unit of measure at or above which the concentration or density of the contaminant must be measured using the Approved Analytical Methods.

5—Sampling Location: the locations within a PWS at which samples must be collected.

6—Years During Which Monitoring to be Completed: The years during which the sampling and testing are to occur for the indicated contaminant.

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes b-d and m was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[a] The version of the EPA methods which you must follow for this Rule are listed at § 141.24 (e).

[b] *Annual Book of ASTM Standards*, 1996 and 1998, Vol. 11.02, American Society for Testing and Materials. Method D5812–96 is located in the *Annual Book of ASTM Standards*, 1998, Vol. 11.02. Methods D5790–95, D5475–93, and D5317–93 are located in the *Annual Book of ASTM Standards*, 1996 and 1998, Vol 11.02. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[c] Official Methods of Analysis of AOAC (Association of Official Analytical Chemist) International, Sixteenth Edition, 4th Revision, 1998, Volume I, AOAC International, First Union National Bank Lockbox, PO Box 75198, Baltimore, MD 21275–5198. 1–800–379–2622.

[d] SM 6210 D is only found in the 18th and 19th editions of Standard Methods for the Examination of Water and Wastewater, 1992 and 1995, American Public Health Association; either edition may be used. SM 6200 B is only found in the 20th edition of Standard Methods for the Examination of Water and Wastewater, 1998. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

[e] Minimum Reporting Level determined by multiplying by 10 the least sensitive method's minimum detection limit (MDL=standard deviation times the Student's T value for 99% confidence level with n-1 degrees of freedom), or when available, multiplying by 5 the least sensitive method's estimated detection limit (where the EDL equals the concentration of compound yielding approximately a 5 to 1 signal to noise ratio or the calculated MDL, whichever is greater).

[f] Entry Points to the Distribution System (EPTDS), After Treatment, representing each non-emergency water source in routine use over the twelve-month period of monitoring; sampling must occur at the EPTDS, unless the State has specified other sampling points that are used for compliance monitoring 40 CFR 141.24 (f)(1), (2), and (3). See 40 CFR 141.40(a)(5)(ii)(C) for a complete explanation of requirements, including the use of source (raw) water sampling points.

[g] Minimum Reporting Levels (MRL) for Volatile Organic Compounds (VOC) determined by multiplying either the published Method Detection Limit (MDL) or 0.5 ug/L times 10, whichever is greater. The MDL of 0.5 ug/L (0.0005 mg/L) was selected to conform to VOC MDL requirements of 40 CFR 141.24(f)(17(E).

[h] To be Determined at a later time.

[i] Compound currently not listed as a contaminant in this method. Methods development currently being conducted in an attempt to add it to the scope of this method.

[j] Methods development currently in progress to develop a solid phase extraction/high performance liquid chromatography/ultraviolet method for the determination of this compound.

[k] Compound listed as being a contaminant using EPA Method 525.2; however, adequate sample preservation is not available. Preservation studies currently being conducted to develop adequate sample preservation.

[l] Methods development currently in progress to develop a solid phase extraction /gas chromatography /mass spectrometry method for the determination of this compound.

[m] Method 314.0, ''Determination of Perchlorate in Drinking Water Using Ion Chromatography,'' Revision 1.0, EPA 815–B–99–003, November 1999. Available by requesting a copy from the EPA Safe Drinking Water Hotline within the United States at (800) 426–4791 (Hours are Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time). Alternately, the method can be assessed and downloaded directly on-line at www.epa.gov/safewater/methods/sourcalt.html.

[n] The approved methods do not allow for the identification and quantification of the individual acids, the single analytical result obtained should be reported as total DCPA mono- and di-acid degradates.

[o] MRL was established at a concentration, which is at least 1/4th the lowest known adverse health concentration, at which acceptable precision and accuracy has been demonstrated in spiked matrix samples.

* * * * *

(5) * * *

(ii) * * *

(C) *Location.* You must collect samples at the location specified for each listed contaminant in column 5 of the Table 1, UCMR (1999) List, in paragraph (a)(3) of this section. The sampling location for chemical contaminants must be the entry point to the distribution system or the compliance monitoring point specified by the State or EPA under 40 CFR 141.24 (f)(1), (2), and (3). If the compliance monitoring point as specified by the State is for source (raw) water and any of the contaminants in paragraph (a)(3) of this section are detected, then you must also sample at the entry point to the distribution system at the frequency indicated in paragraph (a)(5)(ii)(B) of this section with the following exception: If the State or EPA determines that no treatment was instituted between the source water and the distribution system that would affect measurement of the contaminants listed in paragraph (a)(3) of this section, then you do not have to sample at the entry point to the distribution system.

* * * * *

(G) *Testing.* Except as provided in paragraph (a)(5)(ii)(G)(*2*) of this section for new methods, you must arrange for the testing of the contaminants by a laboratory certified under § 141.28 for compliance analysis using the EPA analytical methods listed in column 3 for each contaminant in Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, whether you use the EPA analytical methods or non-EPA methods listed in Table 1.

(*1*) *Laboratory certification for previously approved methods used for the UCMR.* Laboratories are automatically certified for the analysis of UCMR contaminants if they are already certified to conduct compliance monitoring for a contaminant included in the same method being approved for UCMR analysis.

(*2*) *Laboratory approval for new methods used for the UCMR.* To receive approval to conduct analyses for perchlorate, you must be certified to conduct compliance monitoring using an approved ion chromatographic method as listed in § 141.28 and you must analyze and successfully pass the Performance Testing (PT) Program administered by EPA.

(iii) * * *

(G) *Sampling forms.* You must completely fill out the sampling forms sent to you by the laboratory, including the data elements 1 through 4 listed in § 141.35(d) for each sample. If EPA requests that you conduct field analysis of water quality parameters specified in paragraph (a)(4)(i)(B) of this section, you must also complete the sampling form to include the information for data elements 5 through 10 listed in § 141.35(d) for each sample. You must sign and date the sampling forms.

* * * * *

(b) * * *

(1) * * *

(i) *Accept or modify the initial plan.* EPA will first specify the systems serving 10,000 or fewer persons by water source and size in an initial State Monitoring Plan for each State using a random number generator. EPA will also generate a replacement list of systems for systems that may not have been correctly specified on the initial plan. This initial State Monitoring Plan will also indicate the year and day, plus or minus two (2) weeks from the day, that each system must monitor for the contaminants in List 1 of Table 1 of this section, Unregulated Contaminant Monitoring Regulation (1999) List. EPA will provide you with the initial monitoring plan for your State or Tribe, including systems to be Index systems and those systems to be part of the Screening Surveys. Within sixty (60) days of receiving your State's initial plan, you may notify EPA that you either accept it as your State Monitoring Plan or request to modify the initial plan by removing systems that have closed, merged or are purchasing water from another system and replacing them with other systems. Any purchased water system associated with a non-purchased water system must be added to the State Monitoring Plan if the State determines that its distribution system is the location of the maximum residence time or lowest disinfectant residual of the combined distribution system. In this case, the purchased water system must monitor for the contaminants for which the ''distribution system'' is identified as the point of ''maximum residence time'' or ''lowest disinfectant residual,'' depending on the contaminant, and not the community water system selling water to it. You must replace any systems you removed from the initial plan with systems from the replacement list in the order they are listed. Your request to modify the initial plan must include the modified plan and the reasons for the removal and replacement of systems. If you believe that there are reasons other than those previously listed for removing and replacing one or more other systems from the initial plan, you may include those systems and their replacement systems in your request to modify the initial plan. EPA will review your request to modify your State's initial plan. Please note that information about the actual or potential occurrence or non-occurrence of contaminants at a system or a system's vulnerability to contamination is not a basis for removal from or addition to the plan.

* * * * *

(vii) *Participate in monitoring for the Screening Surveys for small and large systems.* Within 120 days prior to sampling, EPA will notify you which systems have been selected to participate in the Screening Surveys, the sampling dates, the designated laboratory for testing, and instructions for sampling. You must review the small systems that EPA selected for the State Monitoring Plan to ensure that the systems are not closed, merged or purchasing water from another system (unless the system is to conduct monitoring for a contaminant with the sampling location specified as ''distribution system''), and then make any replacements in the plan, as described in paragraph (b)(1)(i) of this section. You must notify the selected systems in your State of these Screening Surveys requirements. You must provide the necessary Screening Surveys information to the selected systems at least ninety (90) days prior to the sampling date.

* * * * *

[FR Doc. 00–4761 Filed 3–1–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6544–7]

Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods for Perchlorate and Acetochlor; Announcement of Laboratory Approval and Performance Testing (PT) Program for the Analysis of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, requires the U.S. Environmental Protection Agency to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored. In fulfillment of this requirement, EPA published the Revisions to the Unregulated Contaminant Monitoring Rule (UCMR) on September 17, 1999 (64 FR 50556) which included a list of contaminants to be monitored.

Both perchlorate and acetochlor were placed on the UCMR (1999) List 1, Assessment Monitoring, with the method listed as ''Reserved'' pending imminent conclusion of EPA refinement and review of the analytical methods for perchlorate and acetochlor. In this issue of the **Federal Register**, EPA is revising the UCMR by promulgating analytical methods for the measurement of perchlorate and acetochlor in drinking water as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. EPA has addressed the regulatory text and explained the authority, purpose, and rationale for the rule and the Agency's compliance with the laws and executive orders affecting rulemaking in the preamble to the direct final rule. If EPA receives no adverse comment, it will not take further action on this proposed rule. If EPA receives adverse comment, the Agency will withdraw the direct final rule and it will not take effect. EPA would then address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing by April 3, 2000.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–99–19, Water Docket (MC 4101), U.S. EPA, 401 M Street, SW, Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references).

The full record for this document has been established under docket number W–99–19 and includes supporting documentation as well as printed, paper versions of electronic comments. The full record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, East Tower Basement, U.S. EPA, 401 M Street, SW, Washington, DC. For access to docket (Docket No. W–99–19) materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m., Eastern Time, Monday through Friday, to schedule an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Rachel Sakata, Standards and Risk Management Division, U.S. Environmental Protection Agency, 401 M Street (MC 4607), Washington, DC 20460, (202) 260–2527. For technical information regarding the methods contact David Munch, Technical Support Center, U.S. Environmental Protection Agency, 26 W. Martin Luther King Dr., Cincinnati OH, 45268, (513) 569–7843. General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–99–19. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. Electronic comments on this document may be filed online at many Federal Depository Libraries.

This document concerns the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods for Perchlorate and Acetochlor; Announcement of Laboratory Approval and Performance Testing (PT) Program for the Analysis of Perchlorate. For further information, please see the information provided in the direct final rule published elsewhere in this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: February 23, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–4762 Filed 3–1–00; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
March 2, 2000

Part III

Securities and Exchange Commission

In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission and Order Granting Registration; Notices

Joint Industry Plan; Notice of Filing of Proposed Option Market Linkage Plans by the American Stock Exchange, Chicago Board Options Exchange, Pacific Exchange, and Philadelphia Stock Exchange; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42455; File No. 10–127]

In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission

February 24, 2000.

I. Introduction

On February 2, 1999, the International Securities Exchange LLC (''ISE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') a Form 1 application (''Form 1'') under the Securities Exchange Act of 1934 (''Exchange Act''), seeking registration as a national securities exchange pursuant to Section 6 of the Exchange Act. Notice of the application was published for comment in the **Federal Register** on June 1, 1999.[1] The Commission received twenty-one comments on the proposal.[2] The ISE filed an amendment to its application on September 27, 1999.[3] Notice of the amendment was published for comment in the **Federal Register** on October 26, 1999.[4] The Commission received nine comments on Amendment No. 1.[5] On February 23, 2000, the ISE filed another amendment to its application.[6] This order approves the ISE's application for registration as a national securities exchange, as amended.

II. Discussion

Under Sections 6 and 19(a) of the Exchange Act, the Commission will grant an order for registration as a national securities exchange if it finds that the exchange is so organized and has the capacity to carry out the purposes of the Exchange Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange. The rules of the exchange must be adequate to insure fair dealing and to protect investors, and may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

After a review of the ISE's amended application in accordance with these standards, the Commission has determined to grant the registration of the Exchange. In taking this action, the Commission notes that the ISE will not be permitted to begin trading until after it satisfies a number of conditions, which are discussed below.

The Commission finds that the ISE's Constitution and rules are consistent with Section 6 of the Exchange Act in that they are designed to: (1) Assure fair representation of an exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer; (2) to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and (3) to protect investors and the public interest. Finally, the Exchange's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Overall, the Commission believes that granting registration to the ISE as a national securities exchange offers the promise of important benefits to the public and should provide U.S. market participants with a new, innovative method of trading options. As a fully electronic options market, the ISE's entrance to the marketplace should potentially reduce the costs of trading to investors and market professionals, enhance innovation, and increase competition between and among the options exchanges, resulting in better prices and executions for investors.

This discussion does not review every rule and representation made by the ISE that has been filed as a part of its application; rather, it focuses on the most prominent rules and policy issues considered in review of the ISE's application.

III. Consideration of Certain of ISE's Governance Provisions and Trading Rules

A. Corporate Structure

The ISE is organized as a limited liability company (''LLC'') under New York law and will be owned by certain of its members. This corporate structure is substantially the same as the existing exchanges are structured, with one exception. As an LLC, the Exchange will not pay state and federal taxes on its income. Instead, the income will be ''allocated'' to the Class A and Class B memberships (described below), and the owner of each membership will pay taxes on the income. The Exchange will distribute to each owner of a membership the amount necessary to pay the taxes on its allocated portion of the Exchange's net income.

Several commenters believed that, because ISE is organized as a for-profit entity,[7] it is structured to provide owners of memberships a profit from Exchange-generated revenue. Although ISE's expectation is to have net income and it will create a budget and set fees based upon that expectation, it will not distribute profits to its owners. Net income will be used by the ISE to finance capital improvements and to provide for financial reserves. Generally, existing exchanges control the amount of annual net income by adjusting their fees. Some exchanges rebate fees collected, or reduce or eliminate fees temporarily when they exceed projected earnings. ISE's LLC structure provides for a similar financial model as the existing exchanges with the exception of the manner in which taxes are paid.

Many commenters also suggested that because the ISE is organized as a ''for-profit'' entity, its structure creates the potential for conflicts of interest. The Commission notes that conflicts of interest are an inherent part of self-regulation. To the extent that ISE's organization as an LLC, rather than as a not-for-profit corporation, heightens or changes those conflicts of interest, the Commission has evaluated the conflicts of interests and believes that a number

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[1] *See* Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29367 (June 1, 1999).

[2] A summary of comments received on the original application is available in the Public Reference Room at the Commission (File No. 10–127).

[3] *See* Letter from David Krell, President and CEO, ISE, to Jonathan G. Katz, Secretary, Commission, dated September 23, 1999 (''Amendment No. 1''). The ISE included a narrative response to the comment letters in Amendment No. 1. *See* Amendment No. 1, Exhibit 6.

[4] *See* Exchange Act Release No. 42042 (October 20, 1999), 64 FR 57668 (October 26, 1999).

[5] A summary of comments received on Amendment No. 1 is available in the Public Reference Room at the Commission (File No. 10–127).

[6] *See* Letter from David Krell, President and CEO, ISE, to Jonathan G. Katz, Secretary, Commission, dated February 17, 2000 (''Amendment No. 2''). Although Amendment No. 2 was not published for comment, the changes are either responsive to comment letters and the concerns of the Commission or technical in nature. Any other substantive changes to the ISE's rules will be published in the **Federal Register** for notice and comment.

[7] Seven of the eight current U.S. exchanges are ''not-for-profit'' organizations. In its release concerning the regulation of exchanges and alternative trading systems, the Commission expressed its view that registered exchanges may structure themselves as for-profit exchanges. *See* Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (''ATS Release'').

of factors alleviate these concerns.[8] First, ISE will not be the Designated Examining Authority (''DEA'') or Designated Options Examining Authority (''DOEA'') for its members. In other words, ISE is not the primary SRO and, therefore, will not be responsible for the financial oversight of its members, or for disciplining or enforcing common SRO rules. Nor will ISE be responsible for enforcing the rules of another SRO. This alleviates concerns that possible profit-making motives could influence ISE to use its examining authority to profit its members or to harm a competitor-SRO for which it had assumed regulatory obligations. Second, the ISE has filed an interpretation, which will be considered a rule of the Exchange pursuant to Section 3(a)(27) of the Exchange Act, that states that the ISE will make distributions solely to cover members' tax liability for the ISE's income. Cash available for distributions to members will not include revenues received by the Exchange from regulatory fees or regulatory penalties. This will prevent the possibility that regulatory fines and fees might be ''dividended'' out to members.[9] Third, non-industry directors comprise a majority (eight out of fifteen) of the ISE's Board of Directors. Because these non-industry directors are not affiliated with members of the Exchange, they provide a significant safeguard against possible abuse by limiting the influence and control of any one group over the activities of the Exchange. In sum, given that ISE is not a DEA or DOEA, is not a publicly-owned entity, and is not structured to provide its members a profit from Exchange-generated revenue, the Commission does not believe that the concerns regarding a ''for-profit'' exchange functioning as an SRO are serious in the ISE context.

B. Corporate Governance

1. Fair Representation

Section 6(b)(3) of the Exchange Act requires that the rules of an exchange assure fair representation of its members in the selection of its directors and administration of its affairs and, among other things, provide that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. Public representation and individuals who are not affiliated with broker-dealers on an exchange's board of directors helps to satisfy this requirement. This provision is designed to ensure that members have a voice in the use of self-regulatory authority that may affect the members, and to protect members from unfair, unfettered disciplinary actions under the rules of the exchange.

a. ISE's Board of Directors

The Commission finds that the ISE has been structured in such a manner as to satisfy the principles of fair representation as required by Section 6(b)(3) of the Exchange Act. The ISE's Board of Directors will be the governing body of the Exchange and possess all the powers necessary for the management of the business and affairs of the Exchange and for the promotion of its welfare, objects and purposes. The Board will consist of 15 directors: (i) 6 member representatives, comprised of two Class A member representatives (''Primary Market Maker'' or ''PMM''), two Class B member representatives (''Competitive Market Maker'' or ''CMM''), two Class C member representatives (''Electronic Access Member'' or ''EAM''); (ii) eight non-industry directors,[10] at least two of whom must be representatives of the public; [11] and (iii) the President of ISE. Thus, the Board provides members six representatives, yet still consists of a majority of non-industry representatives.

Representatives of Class A, B, and C members will be nominated by a nominating committee [12] and elected to the Board by a plurality of their respective classes.[13] No member organization may have more than one representative elected to the Board.[14] Non-industry directors will be nominated by the nominating committee and elected by an affirmative vote of a majority of the Class A members, a majority of the Class B members and a majority of the Class C members voting by class if the election is uncontested.[15] Industry and non-industry candidates may also be placed on the ballot by petition.[16] All directors will serve for a two-year term,[17] except that the President will serve until removed. No director, other than the President, who has been elected to three consecutive terms is eligible for election as a director again except after a minimum of a two-year interval.

The Chairman and Vice Chairman of the Board will be appointed from among the directors by the affirmative vote of at least two-thirds of the directors then in office. The Chairman and Vice Chairman each will serve for a one-year term and will not be officers of the Exchange.

PMM and CMM directors have special voting rights regarding the approval of proposed rule changes by the Board. Specifically, in order to adopt, amend or repeal certain governance and trading rule changes, there must be a majority of the entire Board that votes in favor of the proposed change. In addition, at least one PMM director *and* one CMM director must vote in favor of the proposed change.[18] One commenter asserts that this provision gives an effective veto power to the PMM and CMM classes.[19] In response to this comment, the ISE has amended its Constitution to reflect that approval of a proposed rule change will now require a favorable vote by a majority of the Board, including *either* one PMM director and one CMM director *or* five out of eight of the non-industry directors.[20] The revised provision therefore permits an override of the objecting PMM and CMM directors in a situation where a majority of the non-industry directors vote in favor of the

[8] The Commission believes that assessing conflicts of interest concerns in the context of an SRO can be highly dependent on, among other things, corporate and membership structure, which must be analyzed on a continuous case-by-case basis. Although the factors described in this release are helpful in allaying concerns over the ISE's for-profit status, the Commission recognizes that there may be other factors that could be considered in addressing these concerns in the future.

[9] *See* Amendment No. 2.

[10] A ''non-industry representative'' means any person that would not be considered an ''industry representative,'' as well as (i) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of non-member affiliates, (ii) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity and who is primarily engaged in the business of the non-member entity. *See* ISE Constitution, Article I, Section 1(r).

[11] A ''representative of the public'' means a non-industry representative who has no material business relationship with a broker or dealer or the Exchange. *See* ISE Constitution, Article I, Section (1)(v).

[12] *See* ISE Constitution, Article VI, Section 3(c). *See, e.g.*, National Association of Securities Dealers, Inc. (''NASD'') Bylaws, Article VII, Section 10. The Nominating Committee is composed of a representative from each class, as well as three non-industry representatives, at least one of which must be public.

[13] *See* ISE Constitution, Article IV, Section 1(a).

[14] *See* ISE Constitution, Article IV, Section 1(c).

[15] If there are more candidates than the number of vacancies to be filled, non-industry directors are elected by a plurality of all members using a weighting system. *See* ISE Constitution, Article V, Section 1(d).

[16] *See* ISE Constitution, Article VI, Section 3(e).

[17] One half of each class of directors will be elected at each annual meeting of the members. *See* ISE Constitution, Article IV, Sec. 1(b). At the initial election meeting, the Board will randomly select one Class A director, one Class B director, one Class C director, and four non-industry directors (at least one of which must be a public director) who will serve for an initial term of three years. *See* ISE Constitution, Article IV, Sec. 1(e)(6).

[18] *See* ISE Constitution, Article VII, Sec. 1.

[19] *See* American Stock Exchange (''Amex'') Letter.

[20] *See* Amendment No. 2.

proposed rule change.[21] Essentially, a PMM director and a CMM director who vote against a proposed rule change will only succeed in vetoing the proposed change if four or more non-industry directors also vote against the proposal.

Although this special voting provision provides a limited veto power to PMMs and CMMs with regard to proposed rule changes, the Commission believes that a certain level of protection to the equity owners-members in the Exchange is reasonable.[22] Inherent in the concept of a for-profit entity is the notion that those with equity interests in the entity should be afforded rights to protect those interests. It is impractical to expect persons to take up an equity interest in an exchange if they are not permitted to protect that interest in some fair and reasonable manner. In the scheme of self-regulation, however, this notion must be balanced with the requirement of fair representation of all members, not just those with equity interests. The Commission believes that the ISE's voting provision with respect to approval of proposed rule changes reaches an acceptable balance between protecting owner-members, non-owner-members, and the public interest.

b. Rights to Vote on Certain Corporate Actions

Each of the current exchanges has several different types of memberships with differing equity interests and voting rights.[23] ISE's voting structure is set up to recognize the difference in ownership interests among its members. PMMs and CMMs own memberships that represent equity interests in the Exchange. These memberships may be leased or sold to approved persons or entities. In contrast, EAMs do not own an equity interest in the Exchange. EAMs essentially have rights to trade on the Exchange, which are not transferable. Although all three classes of memberships elect representatives to the Board, as well as participate in the election of the non-industry directors,[24] when a vote of the membership is required to take certain action, the EAMs do not have the same rights as the PMMs and CMMs. Specifically, PMM members and CMM members have the right to vote on corporate actions like mergers, consolidations or dissolution of the Exchange, changes to the structure of the Exchange such as adding additional classes of members or increasing the number of memberships in a class, and amendments to the Constitution.[25] EAMs, however, do not generally have the right to vote on such actions.[26] EAMs only have the right to vote on changes to the Constitution or Operating Agreement that would affect their economic status on the Exchange, alter their voting rights, or change the composition of the Board of Directors.[27]

c. ISE's Structure Provides Fair Representation

Two commenters believe that the ISE's proposed governance structure provides the two classes of market makers, PMMs and CMMs, with undue influence over the operation of the Exchange, thereby not satisfying the fair representation requirement of the Exchange Act. [28] The Commission disagrees. First, only four out of the fifteen Board members will be representative of market makers (who are the equity owners). Second, the nominating committee is composed of a representative from each class and three non-industry representatives, at least one of whom must be a public representative, thereby providing for input in the nominating process from more than just the market makers. Third, the Board is composed of a majority of non-industry directors. Finally, although voting rights are determined by the type of ownership interest in the Exchange, *i.e.*, equity versus non-equity, all members and classes have an input in Exchange governance. Specifically, each class of members elects two representatives to the Board of Directors and participates equally in the election of the non-industry directors. Given these provisions, the Commission believes that the ISE's governance structure satisfies the fair representation requirement under the Exchange Act.

2. Chairman's Affiliation with a Member

The rules of certain national securities exchanges currently do not permit their respective chairmen to be a member of the exchange or affiliated with a member of the exchange.[29] The ISE's first Chairman, however, is affiliated with a member of the Exchange.[30]

As many commenters note, the affiliation of the Chairman with one of the Exchange's members implicates certain conflicts of interest, or at least gives the appearance of such conflicts. ISE asserts that the choice of their first chairman is very important to the success and credibility of the Exchange. To address the conflicts raised, the ISE's Constitution provides certain protections limiting the functions and role of the Chairman. First, the Chairman of the ISE is not an officer of the Exchange.[31] Thus, the Chairman does not have the authority to bind the Exchange. Second, no later than two years after the start-up of trading on the ISE, the Chairman will be appointed from among the non-industry directors.[32] Third, the functions that the Chairman will perform are substantially limited. The Chairman may preside over meetings of the Board of Directors, vote at meetings of the Board, serve on the Executive Committee of the Exchange,[33] call a special meeting of the ISE's members,[34] and receive resignations from Board members.[35] Given these safeguards and given the highly limited role of the Chairman, the Commission believes that the conflict concerns related to an affiliated chairman have been adequately addressed. Furthermore, the Commission notes that an interested director is prohibited from participating as a member of the Board or of any committee in any matter that would substantially affect his interest or the interests of any person in whom he is directly or indirectly interested.[36] This prohibition provides additional assurance that the Chairman will not participate in a matter in which he may have an interest by virtue of his

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[21] *See* Amendment No. 2.

[22] The Commission notes that this analysis applies only to situations where the equity owners are also members of the exchange. The analysis would be different where equity owners in an exchange were not also members of the exchange. In the event that equity owners were not also members of an exchange, the Commission might find that the non-equity members of the exchange were entitled to further special protections or rights.

[23] *See, e.g.*, New York Stock Exchange (''NYSE'') Constitution, Article II, Section 1 (concerning regular memberships, electronic access members and physical access members).

[24] *See* ISE Constitution, Article IV, Section 1(a) and (d).

[25] *See* ISE Constitution, Article III, Section 11(a).

[26] *See* ISE Constitution, Article III, Section 11(b).

[27] *See* ISE Constitution, Article III, Section 11(b).

[28] *See* Chicago Board Options Exchange (''CBOE'') Letter I, Amex Letter.

[1] *See, e.g.*, CBOE Constitution, Article VIII, Section 8.1; Amex Constitution, Article II, Section 3. *But see* File No. SR–Amex–99–25. Amex has filed a proposed rule change with the Commission that would permit the Amex Chairman to be affiliated with a member.

[30] The ISE's Chairman is Mr. William Porter. Mr. Porter is also Chairman of Adirondack Trading Partners, LLC (''ATP''), a founding member of the ISE and a proposed PMM on the Exchange. *See* ISE Form 1, Exhibit G.

[31] *See* ISE Constitution, Article IV, Section 2.

[32] *Id.*

[33] The ISE's Executive Committee is composed of six directors, including the Chairman, the Vice Chairman, President of the Exchange, and three non-industry directors (at least one of whom must be public). The President of the Exchange is the Chairman of the Executive Committee. *See* ISE Constitution, Article VI, Section 2(a).

[34] A majority of the Board, as well as a set number of members may also call a special meeting. *See* ISE Constitution, Article III, Section 3.

[35] *See* ISE Constitution, Article IV, Section 4(a).

[36] *See* ISE Constitution, Article IV, Section 11. Interested directors may be counted in determining the presence of a quorum.

affiliation with a member of the Exchange.

3. Officers

The Exchange will have a President, one or more Vice Presidents, a Treasurer, a Secretary and any other officers as may be appointed by the President. The President will be elected by a majority of the Board and is the Chief Executive Officer.

Generally, officers of the Exchange are not permitted to be members of the Exchange or be affiliated with members of the Exchange. If an officer owns a membership or is affiliated with a member upon his election to office, the officer must abstain from exercising voting rights with respect to the membership and must also lease the membership. The terms of the lease by an officer must be reasonable and approved by a majority of the non-industry directors.[37]

An exception to the general prohibition on officers owning memberships has been provided with respect to two individuals who are founders and who own CMM memberships.[38] Specifically, the initial President and Chief Executive Officer of the ISE is Mr. David Krell. The initial Senior Vice President of Marketing and Business Development is Mr. Gary Katz. As founders of ISE, Mr. Krell and Mr. Katz are to be compensated with memberships. Mr. Krell will receive four memberships and Mr. Katz will receive two. Again, commenters note that conflicts of interest arise where officers are permitted to own memberships or be affiliated with members. The ISE has provided a number of safeguards to protect against such conflicts. First, an officer of the Exchange who owns one or more memberships must abstain from exercising any voting rights associated with the membership(s).[39] Second, an officer who owns a membership must lease that membership and the terms of the lease must be reasonable and approved by a majority of non-industry directors.[40] Finally, except in the case where one or more officers is also a founder, the ISE will only permit one officer to be an owner of one or more memberships.[41] The Commission believes that these provisions should protect against an officer allowing his economic interest in the success of his membership from affecting his duties as an officer of the Exchange.

4. Delegation of Authority

Several commenters criticize the manner in which the ISE will delegate decision-making authority within the Exchange. These commenters believe that the ISE should be required to specify who or what will have the relevant decision-making authority, rather than stating that such authority resides with ''the Exchange.'' In response, the ISE has amended several of its rules to provide more specificity.[42] The Commission believes that these and other rules are sufficiently specific to insure fair dealing and to protect investors.

C. Membership

As noted above, there will be three types or classes of members at the ISE: PMMs, CMMs, and EAMs.[43] The Exchange has established limitations on the number of memberships that a member may own, as well as on the number of memberships for which a member may be approved to trade on the Exchange.

1. Concentration Limits on Memberships

Several commenters criticize the concentrated ownership of the ISE in a few founders. Specifically, these commenters contend that a large portion of the ISE will be controlled or owned for a significant number of years by individuals, namely the ISE's founders, who will own the memberships for investment purposes and not for the purpose of conducting a securities business. Commenters also criticize the ISE for not requiring members to lease memberships if they are not engaged in trading on the ISE.[44]

The ISE has adopted concentration limits to restrict the number of memberships that one person, together with any person who directly or indirectly controls, is controlled by, or is under common control with the person, may own or lease. Generally, one person may not own or lease more than twenty percent of any class of memberships. The Exchange has the authority to further limit the number of Class A and Class B memberships that may be owned or leased by a member.[45] Specifically, ISE Rule 303(g) states that an applicant will be denied approval to purchase a membership if, together with any person who directly or indirectly controls, is controlled by, or is under common control with the applicant, that approval would result in the applicant owning and/or leasing more than one PMM membership or more than ten CMM memberships, unless the restriction is waived by the Board for good cause shown.

Many commenters noted that the ISE's Rules 303(g) and 317(a)[46] failed to define ''good cause shown.'' In response, the ISE has defined ''good cause shown'' to mean a demonstrated operational, business or regulatory need. The ISE states that in those cases where such a need has been demonstrated to the Board, the Board will also consider any operational, business or regulatory concerns that might be raised if such a waiver were granted. Furthermore, the Board will only waive such limitations when, in its judgment, such action is in

[37] *See* ISE Constitution, Article V, Section 2.

[38] *See* ISE Form 1, Exhibit I.

[39] *See* ISE Constitution, Article V, Section 2.

[40] *Id.* As founders, Mr. Krell and Mr. Katz will not be required to immediately lease or sell their respective memberships. *See* ISE Rules 300(a)(5) and 310. During the time that their memberships are held without being leased, however, there will be no voting rights associated with the memberships.

[41] *See* ISE Constitution, Article V, Section 2.

[42] *See* Amendment No. 2. Specifically, the ISE has amended the following rules: (1) Rule 411(h) (Significant Business Transaction) has been amended to specify that any exemption from the requirements of the rule receive approval by the Chief Regulatory Officer of the ISE; (2) Rule 417 (Limit on Uncovered Short Positions) has been amended to specify that the Board or a committee or Exchange official designated by the Board will make determinations or take action under this rule; (3) Rules 702 (Trading Halts), 704 (Unusual Market Conditions) and 717(g) (Limitations on Orders—Orders for the Account of Another Member) have been amended to specify that an Exchange official designated by the Board will make determinations and take actions under these rules; (4) Rule 802 (Appointment of Market Makers) has been amended to specify that the Exchange's Board or a committee designated by the Board will have responsibility for appointing, reviewing and suspending market makers; (5) Rule 804(e)(2)(iii) (Market Maker Quotations) has been amended to specify that an official designated by the Board will be responsible for calling upon a CMM to submit a single quote or to maintain continuous quotes in options when in the judgment of such official, it is necessary to do so in the interest of fair and orderly markets; and (6) Rule 1500 (Imposition of Suspension) has been amended to specify that the Board or a committee or Exchange official designated by the Board will determine when and if summary suspension is necessary or whether access to services by the Exchange may be limited or prohibited with respect to any person or member. In addition, ISE Rule 801 (Designated Trading Representatives) has been amended to remove reference to a ''registration'' requirement for Designated Trading Representatives (''DTR''). The text of the rule now makes clear that a DTR must be approved by the Exchange before he or she will be permitted to enter quotations and orders into the ISE's system on behalf of an ISE market maker member. The reference to a ''registration'' requirement had implied that the ISE was creating a new registration category for purposes of Form U–4, which it was not. ISE Rule 801(b)(4) also has been amended to specify that any conditional approvals of DTRs will be made by the Chief Regulatory Officer.

[43] Brokers that clear for other members must be approved EAMs. *See* ISE Constitution, Article I, Section 1(a)(f).

[44] *See, e.g.*, CBOE Letter 1.

[45] *See* ISE Constitution, Article II, Section 11(a); ISE Rule 303(g).

[46] ISE Rule 317(a), discussed below, concerns the limitation on the number of memberships with respect to which a member may be approved to trade on the Exchange.

the best interest of the Exchange.[47] As a general matter, the Exchange states that it anticipates granting such waivers primarily on a temporary basis when needed to address mergers, acquisitions and similar business combinations.[48] Accordingly, only in truly necessary circumstances will the Exchange permit a member to own or operate more than one PMM membership, and even in that case the member may not own or operate more than two PMM memberships.

Although founders of the Exchange have a temporary exemption from the above ownership concentration limits, not to exceed ten years,[49] a number of other limitations have been placed on founders' ownership of memberships. First, founders may not vote on changes to the Constitution (other than those that fall within ownership voting rights, *i.e.*, mergers, consolidations, dissolution). Second, founders may not exercise the right to vote for directors except with respect to those memberships that have been approved for trading on the Exchange. Third, when a founder leases a membership, it is required to transfer the membership voting rights to the lessee. Fourth, membership voting rights with respect to memberships for which a founder has not been approved to trade on the Exchange or which have not been leased are not considered ''active'' or ''outstanding'' either for voting or quorum purposes. Finally, to address the concern that founders might retain control of the exchange indefinitely, they are required to sell all of their memberships that exceed the concentration limitations within ten years of initiation of trading on the Exchange. The Commission believes that these restrictions adequately prevent the founders from having an undue ability to control the election of directors or the operation of the Exchange. In the Commission's view, the ISE's concentration limits and divestiture requirements address both the economic needs of the Exchange as a start-up venture and the statutory requirements that all members are fairly represented and that conflicts of interest are minimized.

2. Restrictions on the Number of Memberships That May Be Approve for Trading

a. Generally

The Exchange has established limitations on the number of memberships with respect to which the Exchange will approve a member to trade on the Exchange. Generally, the Exchange will approve a member to effect Exchange transactions pursuant to only one PMM membership. If a member can show good cause,[50] the Exchange may approve a member to effect Exchange transactions with respect to two PMM memberships.[51] Founders are subject to the same limits on how many memberships they may use for trading.

b. Initial Approval of Memberships

The Exchange also has established further limitations on the number of memberships that a member initially may use for trading.[52] These limits are based upon the number of members in each class that have been approved to effect Exchange transactions. Specifically, the Exchange will not initially approve a member to effect Exchange transactions with respect to more than one PMM membership until the Exchange has approved at least five other members to effect exchange transactions with respect to PMM memberships.[53] In addition, the Exchange has adopted a tiered approach with respect to multiple CMM memberships. The Exchange will not initially approve a member to use multiple CMM memberships for trading until the Exchange has approved a minimum number of different members to effect Exchange transactions with respect to CMM memberships.[54] The Commission believes that the ISE's approach to activating trading rights will protect against one or a few market makers dominating trading on the Exchange and, therefore, will promote competition.

3. Divestiture of Memberships Owned by Founders

To diversify the Exchange's membership, the Exchange's rules require the transfer of the memberships owned by founders that exceed the concentration limits over a certain timeframe. As noted above, founders will be permitted to exceed the ownership concentration limits on a temporary basis. The Exchange, however, has the authority to assure that founders make memberships available and divest their ownership of memberships within a reasonable time period where they exceed the concentration limits. Specifically, six years after trading begins on the ISE, the Exchange can offer those membership(s) for sale if a founder fails to lease or sell at least forty percent of the memberships that exceed the concentration limitations.[55] Within ten years of initiation of trading on the Exchange, founders must sell all memberships that exceed the concentration limitations. Again, if a founder does not meet this requirement, the Exchange may sell the number of memberships that exceed the concentration limits for the benefit of the founder.[56] The Commission believes that providing the ISE with the authority to sell off memberships where a founder does not dispose of memberships exceeding the concentration limits is appropriate to ensure that, over time, the interests on, and control over, the Exchange become increasingly diversified.

D. Discipline and Oversight of Members

As a prerequisite for the Commission's approval of an exchange's application for registration, the exchange must be organized and have the capacity to carry out the purposes of the Exchange Act. Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and the rules of the exchange.[57]

The ISE's rules generally provide that it has disciplinary jurisdiction over its

[47] *See* Amendment No. 2.

[48] The ISE states that the Exchange's management currently anticipates recommending that the Board grant a waiver of this provision only to ATP, a founder of the Exchange. This recommendation is due to ATP's position in funding the Exchange, and also due to the unique nature of ATP's membership. Specifically, ATP is owned by a consortium of broker-dealers and other entities, and thus ATP itself represents widespread ownership in the securities industry. The Board, which will have a majority of non-industry Directors, must determine that approval of management's recommendation is in the best interest of the ISE.

[49] *See* ISE Constitution, Article II, Section 11(c).

[50] *See supra* notes 46–48 and accompanying text (defining ''good cause shown'').

[51] *See* ISE Rule 317(a).

[52] *See* ISE Constitution, Article II, Section 11(b); ISE Rule 317(b)(1) and (2).

[53] *See* ISE Rule 317(b)(1).

[54] *See* ISE Rule 317(b)(2). To reiterate, although founders are exempt from the concentration limits on ownership of memberships for ten years, they are not exempt with respect to limitations on the number of memberships for which they may approve for trading on the Exchange. *See* ISE Constitution, Article II, Section 11(b).

[55] *See* ISE Rule 310(b)(5).

[56] *See* ISE Rule 310(b)(4). For example, if a member owned twenty CMM memberships, it would be required to lease or sell at least four (40% of 10 is 4) prior to six years after the date trading on the Exchange commences. If that member only leases or sells two of the memberships by six years after the date trading began on the Exchange, the Exchange would take control of two memberships and sell them for the member's benefit.

[57] Section 6(b)(1) of the Exchange Act, 15 U.S.C. 78f(b)(1). For purposes of ISE's regulatory authority and rules, EAMs are ''Members'' of the Exchange. *See also* Section 3(a)(3)(A) of the Exchange Act, 15 U.S.C. 78c(a)(3)(A) (defining the term ''member'').

members to enforce their compliance with the ISE's rules and the federal securities laws.[58] The ISE's rules also permit it to sanction members for violations of the Exchange's rules and violations of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions or operations, fining or censuring members, or suspending or barring a person from being associated with a member.[59] The Exchange's rules also provide for the imposition of fines for minor rule violations in lieu of commencing disciplinary proceedings.[60]

The Commission finds that the ISE's Constitution and rules concerning its disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(7) and 6(d) of the Exchange Act in that they provide for fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of the Exchange adequately provide it with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

1. Exchange Act Rule 17d–2 Agreements

Section 17 of the Exchange Act and Rule 17d–2 thereunder permit self-regulatory organizations (''SROs''), through so-called Rule 17d–2 agreements, to allocate certain regulatory responsibilities. Under Exchange Act Rule 17d–1,[61] a broker-dealer that is a member of more than one SRO has only one DEA, an SRO that is responsible for financial aspects of that broker-dealer's regulatory oversight. Exchange Act Rule 17d–2 [62] permits SROs to enter into agreements whereby one SRO assumes regulatory responsibilities for member firms (so-called ''joint members'') that are members of both the examining SRO and another SRO. SROs that delegate an area of regulation to another SRO under a Rule 17d–2 arrangement are relieved of regulatory responsibility under the Exchange Act for that area. These agreements help to avoid duplicative oversight and regulation. Generally, these agreements cover such regulatory functions as personnel registration, branch office examinations and sales practices. All existing SROs have entered into such agreements. These agreements must be filed with and approved by the Commission.[63]

The ISE intends to enter into a Rule 17d–2 agreement with NASD Regulation and with the DOEAs under the Options Designation Plan (''examining SROs''). The ISE's rules require that all EAMs be members of at least one of the examining SROs.[64] Under these agreements, the examining SROs will examine firms that are joint members of the ISE and the particular examining SRO for compliance with certain provisions of the Exchange Act, certain of the rules and regulations adopted thereunder, certain examining SRO rules, and certain ISE rules. As noted above, these agreements must be filed with, and approved by, the Commission. Once filed, the Commission will publish these agreements for comment.

2. ''Contracting Out'' of Certain Regulatory Functions

Not all of the ISE's regulatory responsibilities will be allocated to another SRO under a Rule 17d–2 agreement. For those responsibilities that fall outside the scope of any Rule 17d–2 agreement, the ISE has contracted with NASD Regulation on a payment for services basis (''Regulatory Services Agreement'').[65] Under the Regulatory Services Agreement, NASD Regulation will perform certain regulatory functions as an agent on behalf of the ISE. Specifically, NASD Regulation will process membership applications, will conduct certain ''upstairs'' investigations and will prosecute ISE enforcement actions. The ISE also intends to use the hearing panel infrastructure of NASD Regulation to conduct enforcement hearings.[66] Notwithstanding the fact that the Exchange will contract with NASD Regulation to perform these functions, the Exchange continues to bear ultimate regulatory responsibility.

Several commenters suggest that the ISE is attempting to abdicate its self-regulatory responsibilities by contracting out many of these functions to another SRO. The Commission disagrees. The Commission has previously recognized that contractual regulatory agreements between SROs outside of the Rule 17d–2 context may be permissible in instances where it is consistent with the public interest.[67] The Commission believes that it is reasonable and consistent with the public interest to allow an SRO to contract with another SRO to perform disciplinary and enforcement functions. Discipline and enforcement are fundamental elements to a regulatory program, and constitute core self-regulatory functions. It is essential to the public interest and the protection of investors that these functions are carried out in an exemplary manner, and the Commission believes that NASD Regulation has the expertise and experience to perform these functions.

At the same time, the Commission believes that it is important for, and that the Exchange Act requires, the ultimate responsibility and primary liability for self-regulatory failures to rest with the Exchange itself, rather than the SRO retained to perform the disciplinary and enforcement functions. Thus, the ISE will bear ultimate legal responsibility for the performance of its self-regulatory obligations. The SRO performing the function, however, may nonetheless bear liability for causing or, in appropriate circumstances, aiding and abetting the Exchange's violations.[68]

[58] *See* ISE Rules, Chapter 16.

[59] *See* ISE Rules, Chapter 15.

[60] *See* ISE Rule 1614. Minor ISE rule violations include, for example, violating the position limit rules, failing to file FOCUS reports, failing to provide trade data, violating conduct and decorum policies, violating the order entry rules (Rule 717(a), (c)—(e)), violating the quotation parameters, or failing to execute orders in appointed options.

[61] 17 CFR 240.17d–1.

[62] 17 CFR 240.17d–2.

[63] For example, the Commission has approved a regulatory plan (''Options Designation Plan'') filed by the Amex, CBOE, NASD, NYSE, Pacific Exchange (''PCX'') and Philadelphia Stock Exchange (''Phlx'') that allocates the regulatory responsibilities among these SROs for common members, by designating four of the participating SROs as the options examination authority for a portion of the common members. The SRO designated under the plan as a broker-dealer's options examination authority is responsible for conducting options-related sales practice examinations and investigating option-related customer complaints and terminations for cause of associated persons. The designated SRO is also responsible for examining a firm's compliance with the provisions of applicable federal securities laws and the rules and regulations thereunder, its own rules, and the rules of any SRO of which the firm is a member. *See* Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41265 (September 14, 1983).

[64] *See* ISE Rule 600. Although the rules of the ISE do not require that PMMs and CMMs be members of an SRO with which the ISE has entered into a Rule 17d–2 agreement, the ISE's membership application, which has been included as part of the Exchange's Form 1, states such a requirement. Accordingly, the ISE is not accepting membership applications from entities seeking to be members solely of the ISE. To change this requirement, the ISE would have to file a proposed rule change with the Commission under Exchange Act Rule 19b–4.

[65] Although the ISE's rules provide for disciplinary jurisdiction and procedures, investigatory processes, and arbitration procedures, the Exchange's Constitution provides it with the authority to contract with an SRO to perform some or all of these functions. *See* ISE Rules 1615 (disciplinary functions); 1706 (hearings and review); and 1835 (arbitration).

[66] *See* Amendment No. 1.

[67] *See* ATS Release, *supra* note 7.

[68] For example, if failings by NASD Regulation have the effect of leaving ISE in violation of any aspect of the Exchange's self-regulatory obligations, ISE would bear direct liability for the violation,

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Accordingly, although NASD Regulation will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for the ISE, NASD Regulation also may have secondary liability if the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by the ISE.

The Commission has reviewed the terms of the Regulatory Services Agreement, which provides a detailed description of the functions NASD Regulation agrees to perform.[69] The Commission believes that this agreement provides for oversight of ISE members and enforcement of ISE rules and federal securities laws in a manner consistent with the public interest. Moreover, the terms under which NASD Regulation will perform certain regulatory functions for the ISE are sufficiently described so as to ensure a regulatory program that will satisfy the statutory requirements, including safeguarding against manipulation and fraud. Under this agreement, NASD Regulation will perform various regulatory functions, whereas the ISE will retain decision-making authority. For example, although NASD Regulation will process membership applications to ensure their completeness, the ISE will make all determinations regarding approval or denial of membership on the Exchange. The ISE will also determine whether to bring enforcement actions. Any hearing will be before an ISE hearing panel, consisting of a hearing officer (likely hired from NASD Regulation) and representatives of ISE members. In addition, the ISE's Board will have the opportunity to consider all appeals of ISE disciplinary actions before they can become final actions of the Exchange.

3. Surveillance

A number of commenters expressed concern about ISE's surveillance program, stating that they did not have enough information about it to make a determination concerning its adequacy. The Commission notes that, as a matter of Commission policy, surveillance programs and procedures are generally kept confidential.[70] The ISE has represented that it intends to administer its own surveillance system for trading on the Exchange. The ISE's staff will operate the system and be responsible for conducting all aspects of the daily surveillance of trading and its market activities.[71] These responsibilities will include, among other things, a real-time audit trail to monitor market participants and to detect abusive trading activity.

4. ''Information Barrier'' Between Market Making and ''Other Business Activities''

Currently, the rules of several of the SROs impose certain restrictions on the business activities of a member or member organization that is affiliated with a specialist or member organization. However, a member or member organization that is affiliated with a specialist or market maker may obtain an exemption from these restrictions if certain procedures are established that restrict the flow of material, non-public information between the affiliated member and the specialist or market maker, *i.e.*, an ''information barrier.'' For example, the rules of the NYSE provide that in order to obtain such an exemption, a member or member organization affiliated with a specialist or market maker must, among other things, establish another organization separate and distinct from the specialist or market making business. That is, ''[t]he specialist member organization must function as an entirely freestanding, separate entity responsible for its own trading decisions, and may not function in any manner as a 'downstairs' extension of the 'upstairs' trading desk.'' [72] The rules of the PCX, however, do not require that a separate corporate entity be formed with respect to these business activities. PCX requires only functional separation, not organizational separation.[73]

Similar to the rules of the PCX, the ISE will permit its market makers to engage in other business activities, or to be affiliated with broker-dealers that engage in other business activities,[74] if there is an information barrier between the market making activities and the other business activities, *i.e.*, functional separation.[75] In other words, the ISE will not require a separate, affiliated broker-dealer organization to be established. Thus, a market maker on the ISE will be permitted to also be an EAM provided sufficient procedures are in place to ensure that the flow of material, non-public information between the two businesses is restricted. As with the rules of the other SROs, a member seeking an exemption from the restrictions on engaging in other business activities must obtain approval of its information barrier procedures from the Exchange.

The Commission finds that the provisions governing ''other business activities'' of market makers are consistent with Section 6(b)(5) of the Exchange Act in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that the ISE's Constitution and rules provide for a clear separation of the market making activities of a firm and its affiliated brokerage business.[76] The information barrier between a market maker and affiliated EAM should protect against an inappropriate sharing of information that could result in market manipulation. The Commission expects the ISE to be vigilant in monitoring for possible abuses in this context.

E. The ISE Trading System

The ISE will operate an automated trading system for standardized equity options. It will conduct an agency auction market similar to the exchange markets currently in operation, although the auction will occur electronically and not on a floor. This section describes the most significant rules and procedures governing trading on the ISE.

1. Generally

Generally, each PMM and CMM on the ISE will enter its own independent quotations into the ISE System (''System''). PMMs and CMMs will enter size with their quotations, which must meet the minimum size requirements, established by the Exchange for the execution of customer orders. EAMs will enter agency and principal orders into the System. PMMs will have terminals that provide them with

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while NASD Regulation may bear liability for causing or aiding and abetting the violation.

[69] The ISE and NASD Regulation have requested confidential treatment for their contractual agreement pursuant to Section 24(b)(2) of the Exchange Act and 17 CFR 240.24b–2 thereunder.

[70] Disclosure of specific surveillance procedures could provide market participants with information that could aid potential attempts at avoiding regulatory detection of inappropriate trading activity.

[71] The ISE's operations are subject to inspection by the Commission. In addition, the ISE's surveillance plan and procedures, as well as the implementation of them, are subject to Commission inspection to ensure that the ISE adequately monitors its market and its members, and enforces its rules and the federal securities laws, including the anti-fraud provisions.

[72] *See* NYSE Rule 98 (and subsequent Guidelines).

[73] *See* PCX Rule 4.20.

[74] ''Other Business Activities'' means (1) conducting an investment or banking or public securities business; (2) making markets in the stock underlying the options in which it makes markets; or (3) functioning as an Electronic Access Member. *See* ISE Rule 810(a).

[75] *See* ISE Rule 810.

[76] One of the commenters asserts that the information barrier requirement is not sufficient to address concerns over internalization of order flow. *See* Sutherland Asbill Letter 2. This concern is discussed in conjunction with internalization below.

information on all of the orders and quotations pending in the System, while CMMs and EAMs will have terminals that display the best bid and offer (''BBO'') currently quoted on the ISE in each options series, as well as the aggregate size of the BBO.

On the existing exchanges, market makers are appointed to options classes within particular physical ''zones'' on the trading floor.[77] Because the ISE will not have a physical trading floor, options classes will be divided into Groups of options classes.[78] Each Class A membership will represent the right to be the PMM in one Group,[79] and each Class B membership will represent the right to be a CMM in one Group.[80] One PMM and at least two CMMs will be appointed to each options class traded on the Exchange.[81]

Overall, there will be a total of 10 PMMs (one in each Group) and 100 CMMs (ultimately 10 in each Group). In addition to being able to enter quotations, PMMs and CMMs will be able to enter ''immediate or cancel'' orders [82] for options in their assigned Groups. Subject to certain limitations, PMMs and CMMs also will be permitted to place orders in any of the other Groups of options classes, but will not be allowed to enter quotations outside their assigned Group(s).[83] EAMs will not be permitted to enter orders that would effectively result in market making on the Exchange.[84]

2. Order Execution and Priority Rules

a. Generally

Trades will occur when orders or quotations match in the System. A customer order in the System (on the book) will always have priority. If more than one customer order has been entered into the System at the same price, priority will be based on the time of order entry. The System will not automatically execute a public customer order at a price inferior to the price quoted on another options exchange.[85] In this situation, the PMM must address such orders either by establishing parameters for matching away-market quotations or by handling them individually. The ISE states that, if a PMM decides to attempt to get the better price from the away market for the customer order, the order will remain in the System during this process. Thus, while a PMM may be seeking the away market price for the order, that order can be executed against a new incoming ISE market order at a price that would not ''trade through'' the away market.[86]

If a member enters a limit order into the System that crosses trading interest already in the System, a trade will occur, to the extent that size is available, at the price of the trading interest already in the System. After executing against that trading interest, the limit order will trade against other trading interest in the System until the limit order is filled in its entirety or the order depletes the available size at that price. If any amount of the limit order remains unexecuted, the balance of the order will become the best bid or offer.[87]

b. Internalization Issues

With the increase of multiple trading of options classes, the options markets are under significant pressure to attract or retain business. One approach to increasing business on an exchange is to allow members, including primary market makers and order entry firms, a preference in trading with customer orders they bring to the market. These preferences have the effect of reducing intramarket price competition by giving priority to a member based on its status as a specialist or as the firm that brought the order to the exchange as opposed to giving priority to a member first to quote at the best price. If exchange rules do not provide a fair opportunity to compete for orders based on price, firms and individuals could have less incentive to be competing market makers on an exchange and price competition may suffer. Eventually, if execution guarantees to particular exchange members become too great, competitive market makers within markets could diminish, and with them active or potential intramarket price competition. As a result, the published quotations, and the prices available on a market, could deteriorate—ultimately harming investors.

A number of commenters expressed concerns that the ISE's trading system would not foster vigorous intramarket competition, and would permit an inordinate amount of internalization of order flow on the ISE.[88] The Commission does not view the basic trading structure of the ISE as inconsistent with intramarket competition, or necessarily resulting in the pervasive internalization of order flow.[89] Therefore, the Commission finds that the ISE's trading system is consistent with Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[90] As with any other options market, however, the degree of intramarket competition is determined by the market's specific trading procedures, which will be set forth in the ISE's rules. As explained further below, for purposes of beginning trading, the ISE will need to file certain rule change proposals with the Commission pursuant to Exchange Act Rule 19b–4 to specify in the rules how it intends to allocate order flow.[91]

(i) Allocation Algorithm

ISE Rule 713(e) states that the Exchange will determine a procedure for allocating executions among non-customer orders and market makers in cases where all public customer orders have been executed and there are two or more non-customer orders or market maker quotes at the best price. The ISE, however, did not include this allocation algorithm in its Form 1 registration application. Commenters assert that the absence of the algorithm from the rule made meaningful comment unfeasible. The Commission does not believe it is necessary to address the allocation algorithm referred to in this provision for the purposes of registering the ISE as a national securities exchange. Following the approval of the ISE's

[77] *See, e.g.*, PCX Rule 6.35 (providing that market makers may select up to six contiguous posts to comprise a ''Primary Appointment Zone)''.

[78] *See* ISE Rule 802(b). The ISE intends to trade all of the series of approximately six hundred actively-traded options classes, which it will divide into ten Groups of approximately sixty classes each. *See* ISE Form 1, Exhibit N.

[79] *See* ISE Constitution, Article II, Section 1(c).

[80] *See* ISE Constitution, Article II, Section 2(c).

[81] *See* ISE Rule 802(c).

[82] An ''immediate-or-cancel'' order requires that all or part of the order be executed as soon as the broker enters a bid or offer; the portion not executed is automatically canceled.

[83] *See* ISE Rules 805(b) and 804(a).

[84] *See* ISE Rule 717(b).

[85] *See* ISE Rule 714(a).

[86] *See* Amendment No. 1, Exhibit 6. The Commission notes that ISE may need to address certain of its order execution and priority rules when a national linkage is developed for the options markets. *See infra* note 108 and accompanying text and section E.2.c (discussing the proposed options linkage plans).

[87] In addition, trades will not necessarily occur when quotes of PMMs and CMMs match or cross each other. Such matches or crosses possibly could occur because market maker auto-quotation systems respond at different speeds. To address this issue, a trade between two or more market makers will only occur after the quotes remain matched for a defined amount of time, which will be less than one second.

[88] *See, e.g.*, Sutherland, Asbill and Brennan Letters 2 and 3, CBOE Letters 1 and 2, and Timber Hill Letter.

[89] ''Internalization'' is generally known as the direction of order flow by a broker-dealer to an affiliated specialist or order flow executed by that broker-dealer as market maker. *See* Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) at n.357 (File No. S7–30–95).

[90] *See* 15 U.S.C. 78f(b)(5).

[91] The Commission intends to publish these proposals in the **Federal Register** for comment.

registration application, the ISE will need to file a rule proposal with the Commission pursuant to Rule 19b–4 under the Exchange Act to establish the Exchange's order allocation algorithm.[92] Although the ISE has not included the allocation algorithm in its rules as currently proposed, it describes generally in its narrative response to the comment letters the principles by which the allocation algorithm will operate.[93] Specifically, all customer orders must be executed in full before any market maker quotes or professional orders are executed. In addition, a market maker quote or professional order must be at the ISE BBO to participate in an execution, and a market maker quote or professional order may never execute in an amount greater than the number of contracts in the quote or order. Priority among CMM quotes and professional orders at the ISE BBO will be based on size, participating in an execution based upon their proportion of the inside displayed size. A PMM, however, will participate in an execution in a somewhat greater proportion in relation to its quote size than a CMM, and when at the BBO will be guaranteed the right to trade against an entire order up to a size determined by the Exchange.[94] In other words, if the PMM is quoting at the ISE's BBO, it will have precedence over non-customer orders and CMM quotes for the execution of orders that are for a specified number of contracts or less (''Minimum Size''). The ISE did not include in its registration application what number of contracts would constitute the Minimum Size for purposes of this provision in ISE Rule 713(e). Two commenters assert that this provision granting PMMs the right to trade ahead of all other market participants (other than public customers) on all orders of less than the Minimum Size not only lacks specificity, but also could discourage other market participants, including CMMs and EAMs, from improving the quotes of a particular option series.[95] The Commission does not believe that failing to specify the Minimum Size referred to in this provision precludes registering the ISE as a national securities exchange because allocating some small orders exclusively to a PMM is not necessarily inconsistent with adequate intramarket competition. Following the approval of the ISE's registration application, however, the ISE will need to file a rule proposal with the Commission pursuant to Rule 19b–4 under the Exchange Act to establish the Exchange's Minimum Size referred to in this Rule.[96] This rule proposal must be consistent with statutory standards.

(ii) Block Order Mechanism

The ISE's rules provide a mechanism for handling block-size orders on the Exchange.[97] This mechanism generally adapts the block trading procedures followed on the existing options exchanges to the ISE's electronic system.[98] Specifically, a special ''block order trading mechanism'' (''BOM'') will be available to EAMs to enable them to solicit market participation for block-size orders of fifty or more contracts.[99] As on the other exchanges, this mechanism is intended to minimize the market impact of large orders and uses a ''quote request'' methodology.

In general, the BOM will permit an EAM to seek out liquidity for the execution of block-size orders by electronically soliciting indications of the prices and sizes at which ''crowd participants''[100] would be willing to trade with block-size orders. The BOM will enable an EAM to enter a block order along with a limit price.[101] The System will then broadcast an anonymous message to the crowd participants. The members of the trading crowd will have a specified amount of time in which to respond to the broadcast message with their indications.[102] The ISE represents that the responses are internal to the System and are not disclosed to any market participants, including the EAM entering the block-size order. At the end of the response period, the order will automatically be executed, unless there is insufficient size to execute the order consistent with the terms of the order.

Bids (offers) on the ISE at the time the block order is executed that are priced higher (lower) than the block execution price, as well as responses to the broadcast message that are priced higher (lower) than the block execution price, will be executed at the block execution price. Responses to broadcast messages, quotes and non-customer orders at the block execution price will participate in the execution of the block-size order.[103] After the trade is executed (or if there is no trade), all unexecuted responses are removed from the System and have no further standing.

One commenter contends that fifty contracts is a relatively small order size to be called block-size.[104] The Commission believes that fifty contracts is a reasonable size for use of a special execution mechanism like the BOM. First, the BOM is a mechanism by which EAMs must take the time to work an order on an order-by-order basis. Such effort should encourage EAMs to use this mechanism for larger orders they believe require special handling. Second, given that the average retail order is for less than ten contracts (thereby falling outside the definition of block), the BOM will not be available for most small retail orders.

Three commenters also criticize the ISE's limited dissemination of broadcast messages.[105] They assert that such a limitation inhibits opportunities for price improvement. The ISE responds that its limited broadcast is designed to involve those ISE members who express an active interest in trading the options series. The ISE also asserts that limiting the broadcast to market makers and members at the ISE BBO acts as an incentive to those members to provide additional liquidity at that price.[106] It appears that the ISE is attempting to emulate electronically the floor environment by limiting the persons to

[92] The Commission intends to publish the proposal in the **Federal Register** for comment.

[93] The ISE's narrative response is included in Amendment No. 1. *See* Amendment No. 1, Exhibit 6.

[94] *See* ISE Rule 713(e).

[95] *See* CBOE Letter and Amex Letter.

[96] The Commission intends to publish the proposal in the **Federal Register** for comment.

[97] *See* ISE Rule 716. The ISE defines a block-size order as an order for fifty (50) contracts or more. *See* ISE Rule 716(a).

[98] Generally, on a traditional options exchange, a broker will represent a block-size order in the trading crowd (located on the trading floor) to discover what price and associated size is available to trade with the block order.

[99] *See* ISE Rule 716. Use of the BOM is not required for block-size orders. The fact that this feature is optional is similar to the other options exchanges where a broker has the option of representing a customer order at a trading post on a floor versus entering the order into an exchange's electronic order routing system.

[100] ''Crowd Participants'' is defined as market makers appointed to an options class under Rule 803, as well as other members with proprietary orders at the ISE BBO for a particular series. See ISE Rule 716(b).

[101] The functionality of the System allows the EAM to specify exactly what information will be disseminated to the market. The EAM using the BOM may determine the amount of information that will be disclosed in the broadcast to crowd participants. For example, the broadcast can disclose that there is a sell or a buy order, or it could ask for size on either side. The broadcast also may or may not display size or price or any conditions on the block-size order.

[102] The ISE's registration application did not contain the time period that crowd participants would have to respond to a block trade broadcast. The ISE will file a rule change prior to beginning trading to establish this time period.

[103] As noted above, the ISE will be required to file a rule change with the Commission proposing the Exchange's order allocation algorithm. *See supra* note 91.

[104] *See* CBOE Letter 1.

[105] *See* CBOE Letter 1, Amex Letter, and Sutherland, Asbill and Brennan Letter 2.

[106] *See* Amendment No. 1, Exhibit 6.

whom a block (or facilitation) broadcast message is sent. Currently, block and facilitated executions occur on the floors of the options exchanges without ever being exposed to anyone other than those persons standing in the trading crowd. The Commission believes that it may ultimately be desirable to expose block-size and facilitated orders more broadly than to a narrow, privileged audience in order to provide price improvement opportunities prior to their execution. Nonetheless, the floor-based exchanges do not currently operate in that manner. The Commission does not believe that an automated exchange like the ISE should be held to a higher display standard in this particular context by being required to expose these orders to participants that are not displaying interest in the option. To do so could favor non-automated markets. Because the ISE, as an all-electronic auction market for options, is the first of its kind in the options industry, the Commission believes it is appropriate to allow the ISE to limit its definition of ''crowd participants'' as described above. As electronic trading of options becomes more widespread, this issue of limited display may warrant reexamination.

Two commenters also expressed concerns that an order of as small as fifty contracts may be executed outside the NBBO, thereby failing to provide intermarket price protection for the person entering the block-size order.[107] The Commission notes that some block orders, by virtue of their larger size, may indeed need to be executed outside of the NBBO in order to be executed in full. Customers buying or selling large size orders are generally aware that the order may not be filled at the NBBO. This can often be the cost of getting a full execution. The ISE, however, will provide block protection to orders on the ISE book. In the event that there are better-priced quotes and orders on the ISE book at the time the block order is executed, those quotes and orders will have priority, and will receive price protection by being executed at the block price. They will not be executed at a worse price than the block price. It is true that the ISE will not provide intermarket price protection for persons entering block size orders, but, as noted above, this is often the cost of getting an execution in full. This is a cost that market participants entering block size orders generally are willing to pay so as to not grossly impact the market price while trying to have their order executed. Moreover, such orders are still subject to a broker's duty of best execution for its customer.

The Commission notes that it is currently considering several proposed options linkage plans,[108] all of which provide for intermarket price protection by containing a prohibition against trade-throughs.[109] Each of the plans provides that, in the event that a block trade trades through a better-priced market,[110] the better-priced market must be satisfied at the price of the transaction that caused the trade-through (*i.e.,* the block price). However, because the ISE's definition of ''block'' is for fifty contracts or more, block-size orders executed on the ISE that do not satisfy the plans' definition of ''block trade'' would be required to satisfy the price of the bid or offer that was traded through, rather than the block price.[111]

(iii) *Facilitation Mechanism*

The existing options markets have procedures governing the manner in which a member may facilitate a customer's order by trading with the order using its proprietary account.[112] This is referred to as a ''firm facilitation.'' These procedures generally are tailored to exchanges with physical trading floors and traditional open outcry systems. Because the ISE will function as a fully automated auction market and will not have a trading floor, it has adapted a ''firm facilitation'' mechanism to an electronic context.

Specifically, ISE Rule 716(d) provides an EAM with the ability to use a special ''facilitation mechanism'' to enter a block size customer order (minimum of 50 contracts) and execute the order as principal. An EAM is not otherwise permitted to execute an agency order as principal unless the order is first permitted to interact with other interest on the ISE. When an order is entered into the facilitation mechanism, the ISE will send a facilitation broadcast to crowd participants.[113] The broadcast message is anonymous and informs crowd participants of the proposed transaction. The facilitation broadcast will contain information on the terms and conditions of the order, including the facilitation price. The identity of the EAM will not be disclosed. The recipients of the broadcast will have a designated amount of time, set by the Exchange, to respond.[114] The responses must be priced at the price of the order being facilitated and must not exceed the size of the order being facilitated. The responses will not be disseminated. If a crowd participant is willing to improve the price of a facilitation order, it may do so by entering its quote or order in the ISE order book at least ten seconds prior to the expiration of the facilitation broadcast, which provides the facilitating member the opportunity to consider whether it is willing to facilitate the customer order at that better price.

At the end of the set time period given, the facilitation order will be automatically executed in full. The facilitation order will be executed at the facilitation price unless there is sufficient interest on the ISE order book to execute the order in its entirety at a better price. If the order is executed at the facilitation price, any better-priced orders or quotes on the order book will receive price protection in the same manner as the BOM, and thus will be executed at the price of the facilitation order. The EAM entering the facilitation order will be allocated a minimum of forty percent of the original size of the facilitation order, but only after better-priced orders and quotes, as well as public customer orders at the facilitation price are executed.[115] Responses to the broadcast, quotes and non-customer orders at the facilitation price will participate in the execution of the facilitation order according to an

[107] *See* CBOE Letter 1 and Amex Letter.

[108] The Commission recently ordered the current options markets to work jointly toward establishing a national market system plan providing for the linkage of all the options markets. *See* Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999) (''Options Linkage Order''). Three plans were filed by CBOE/Amex, Phlx and PCX. Copies of these proposed plans are available in the Commission's Public Reference Room under File No. 4–429.

[109] A trade-thorough occurs where a customer's order is executed on one exchange at a price inferior to that available on another exchange. Currently, intermarket trade-throughs can occur in the options markets because there is no efficient means for accessing quotes across these markets.

[110] The proposed plans uniformly define a ''block trade'' as a trade that: (i) is of block size, defined as 500 contracts or more and a premium value of at least $150,000; (ii) is effected at a price outside of the NBBO; and (iii) involves either a cross (where a member of the exchange represents all or a portion of both sides of the trade) or any other transaction that is not the result of an execution at the current bid or offer on the exchange.

[111] The plans differ with respect to the appropriate size of satisfaction.

[112] *See, e.g.,* Amex Rule 950(d), Commentary .02, and CBOE Rule 6.74(b).

[113] *See* supra note 100 (defining crowd participants).

[114] The ISE's registration application did not contain the time period that crowd participants would have to respond to a facilitation broadcast. The ISE will file a rule proposal prior to beginning trading to establish this time period. The Commission understands that the ISE intends this time period to be thirty seconds. The Commission intends to publish the proposal in the **Federal Register** for comment.

[115] In Amendment No. 1, the ISE proposed to give the EAM a guaranteed minimum participation right of fifty percent of the original size of the facilitation order. The ISE has reduced this participation right to forty percent. *See* Amendment No. 2.

allocation algorithm that will be established in ISE Rule 713(e).[116]

The Commission notes that the ISE has adopted an interpretive amendment to Rule 716(d).[117] Under this interpretation, it would be a violation of a member's duty of best execution to its customer if it were to cancel a facilitation order to avoid execution of the order at the better price. Use of the facilitation mechanism does not modify a member's best execution duty to obtain the best price for its customer. Accordingly, while facilitation orders may be canceled during the facilitation timeframe, if a member were to cancel a facilitation order when there was a superior price available on the ISE and subsequently re-enter the facilitation order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the member did so to avoid execution of its customer order by other market participants. This would violate the member's duty of best execution.

The Commission believes that this interpretation is important to ensure that brokers proposing to facilitate orders as principal fulfill their best execution duties to their customers. In the Commission's view, withdrawing a facilitated order that may be price improved simply to avoid executing the order at the superior price is a violation of a broker's duty of best execution. The Commission expects the ISE to establish procedures to surveil for violations of this best execution obligation.[118]

Commenters expressed concern that the ISE's facilitation mechanism would permit an EAM to internalize a significant amount of order flow. As mentioned above, the Commission is concerned about locking up large portions of order flow from intramarket price competition by granting certain market participants extensive participation guarantees. To address the concerns of the Commission and the commenters, the ISE has amended Rule 716(d)(4)(ii) to reduce a facilitating EAM's minimum participation right to forty percent of the facilitated order. This will leave at least sixty percent of each facilitated order available for participation by other market participants.

It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that forty percent is not clearly inconsistent with the statutory standards of competition and free and open markets.

c. Trade-or-Fade

PMMs and CMMs will have the ability to set parameters regarding their willingness to trade generally with a broker-dealer's proprietary order. When the Exchange receives such an order, any CMM or PMM quotations in the System will be executable only up to the size of the PMM's or CMM's pre-set parameters. The matching rules discussed above otherwise would remain the same. Upon completion of the trade, if a PMM or CMM that has established parameters for trading against a proprietary order does not provide a complete fill of the order, the PMM or CMM cannot continue to quote at that price and must move its quotation to the next level.[119] Orders of market makers on other options exchanges will be handled on an order-by-order basis by the PMM and CMMs.

One commenter criticizes the ISE's ''trade-or-fade'' rule.[120] It argues that the ISE's ''trade-or-fade'' rule, which replicates an identical rule on the other options exchanges, should not be permitted. It suggests that a ''trade-or-fade'' rule results in phantom quoting by market makers, which, in its opinion, invites market manipulation. It further asserts that a ''trade-or-fade'' rule would be particularly problematic on the ISE, given that the ISE intends to tally and display to members the aggregate size of all orders and quotes entered into the system at the BBO. The commenter argues that, if market makers are permitted to retreat from their quotes when they receive a broker-dealer order, then the quoted market will be illusory to broker-dealers.[121]

Although the Commission agrees that the concept of ''trade-or-fade'' raises some concern, for purposes of registration it will not hold the ISE to a different standard than that to which all of the existing options markets are currently held. Requiring the ISE to maintain firm quotes for non-customer orders at this time would put it at a competitive disadvantage in relation to the other options markets. The proposed options linkage plans would limit ''trade-or-fade'' policies with respect to principal and customer orders from other markets up to a certain size.[122] The Commission expects the options markets, including the ISE, to reassess the relevance of their internal ''trade-or-fade'' provisions at the time the linkage is implemented.

3. Limitations on EAMs and Non-Customer Orders

The ISE's rules contain certain unique provisions restricting competition by EAMs and highly automated customers.[123] The ISE asserts that these provisions are needed in light of its business model and the electronic nature of the Exchange. The ISE business model depends on competition between one PMM and ten CMMs per options class. To encourage participation by these market makers, it limits the ability of non-CMMs/PMMs to compete as market makers on equal terms in its automated system. The Commission does not believe that, given the ISE's fully automated auction market, this balance between market makers and non-market makers is inconsistent with the Exchange Act's requirements. The Commission believes that this determination, however, may require review in light of subsequent rule changes or experience with the extent of competition that develops within the ISE's structure.

a. Limitations on Market and Marketable Limit Orders

ISE Rule 717(a) prohibits EAMs from entering into the System, as principal or agent, non-customer market orders or non-customer limit orders that cross the market and that cannot be executed within two minimum trading increments of the best bid or offer. These orders will be canceled by the System. The ISE has represented that this provision is designed to limit volatility. The ISE believes that, in an electronic market, non-customer market orders have the potential to create market volatility by trading at different price levels until executed in their entirety.

One commenter asserts that this is the type of limitation that the Commission generally has been unwilling to approve

[116] *See supra* note 92 and accompanying text.

[117] *See* Amendment No. 2.

[118] The Commission realizes that ensuring that ISE members do not re-enter facilitated orders on markets other than the ISE may be difficult. Nevertheless, the Commission expects the ISE to work with the other options markets through the Intermarket Surveillance Group to develop methods and procedures to monitor their members trading on other markets for possible best execution violations in this context.

[119] This provision is akin to the ''trade-or-fade'' rules of the other options exchanges. *See, e.g.,* CBOE Rule 8.51(b).

[120] *See* Timber Hill Letter.

[121] *See* Timber Hill Letter.

[122] *See supra* note 108.

[123] *See* ISE Rule 717.

in the past.[124] However, the Commission believes that this provision may be more appropriate in a fully automated auction market. Without such a restriction, it would be possible for non-customers to use large-size orders to quickly take out the entire electronic order book. Ultimately, a non-customer order could walk through the entire ISE book without other market participants having an opportunity to react. Because the book is wholly accessible electronically, the ISE's displayed prices could be eliminated without an opportunity for market makers to respond. In contrast, customer orders are much less likely to have this effect given their typically smaller size. Furthermore, it would be extremely difficult for customer orders to quickly take out the book because these orders receive intermarket price protection. The Commission is concerned that this provision may excessively limit access to broker-dealers to trade with the ISE's published prices. Nonetheless, in view of the untested nature of the ISE's electronic market, the Commission has no reason to believe at this time that this provision is inconsistent with the statute. Once experience is gained in the ISE market, this provision may need to be reassessed.

b. Restrictions on EAMs Acting as Market Makers

ISE Rule 717(b) prohibits EAMs from entering into the System, as principal or agent, limit orders in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the EAM or the beneficial owner(s) effectively is operating as a market maker by holding himself out as willing to buy and sell such options contracts on a regular or continuous basis.[125] Essentially, this provision prevents EAMs from using limit orders to effectively quote and make markets on the ISE.

One commenter criticizes this provision. [126] It asserts that the regulatory costs and benefits likely to result from an exchange's prohibition of ''off-floor market making'' must be analyzed on an exchange-by-exchange or crowd-by-crowd basis. It suggests that the European electronic exchange model, which encourages market makers by charging them lower transaction fees rather than giving them monopoly rights, would be more appropriate.[126]

The Commission believes that this provision is reasonable in an effort to prevent EAMs from reaping the benefits of market making activities without having any of the concomitant obligations. Specifically, PMMs and CMMs have affirmative market making obligations, including providing continuous quotations during all market conditions.[128] The Commission also believes that the provision is designed to prevent customers from acting as unregistered market makers, and obtaining an unfair advantage by their orders always appearing at the top of the book by virtue of their public customer status. Moreover, this prohibition is appropriate to prevent public customers from continually entering limit orders of fewer than ten contracts, triggering certain PMM obligations. A PMM has the responsibility to assure that each ISE BBO disseminated market quote in each series of options is for a minimum of ten contracts. When the ISE BBO represents one or more public customer orders for less than a total of ten contracts at that price, the PMM is obligated to buy or sell at that price the number of contracts needed to make the disseminated quote firm for ten contracts.[129] This responsibility arises when the ISE receives a public customer limit order for fewer than ten contracts that would improve the ISE BBO.[130] The Commission believes that, if EAMs or beneficial owners were permitted to enter multiple customer limit orders to such an extent that they were effectively acting as market makers, and, at the same time, jump ahead of all other orders on the book, they would have an inordinate advantage over other participants on the Exchange.

c. Restrictions on Order Size

ISE Rule 717(c) prohibits EAMs from entering into the System, as principal or agent, multiple orders for a single trading interest if one or more orders is for less than ten contracts. This rule is designed to prevent EAMs from abusing a PMM's responsibilities. As noted above, a PMM has the responsibility to assure that each ISE BBO is always firm for a minimum of ten contracts. When the ISE BBO represents one or more public customer orders for less than a total of ten contracts at that price, the PMM is obligated to buy or sell at that price the number of contracts needed to make the disseminated quote firm for ten contracts.[131] Absent this prohibition, an EAM feasibly could break up an order for a single trading interest into several different orders of less than ten contracts each and trigger the PMM's obligation either to trade with each order at the improved price or to make up the difference in the size of the disseminated quote. The Commission believes that, if EAMs, as principal or agent, were permitted to enter multiple orders of less than ten contracts for a single trading interest, this would give them the ability to take advantage of the PMMs.

This provision also provides that non-customer orders for less than ten contracts will be rejected or cancelled automatically if such orders would cause the size of the ISE's BBO to be fewer than ten contracts. The Commission believes that, absent this provision, non-customer orders for less than ten contracts could cause the ISE BBO to be firm for less than ten contracts, in conflict with the ISE's business model of continually displaying a minimum of ten contracts. PMMs are not obligated to trade with these orders or to make up the difference in the disseminated size of the ISE BBO. This provision does not mean that all non-customer orders must be for ten or more contracts. It simply means that if a non-customer wants to improve the ISE BBO, it must do so for at least ten contracts.

d. Limits on Internalization

(i) Restrictions on Principal Transactions

ISE Rule 717(d) limits an EAM's ability to execute as principal orders it represents as agent. Specifically, an EAM may only execute as principal an order it represents as agent if (i) the agency order is first exposed on the ISE for at least two minutes, (ii) the EAM has been bidding or offering on the ISE for at least two minutes prior to receiving an agency order that is executable against such bid or offer, or (iii) the EAM uses the facilitation mechanism.[132] This provision is an attempt to prohibit an EAM from executing, as principal, an order it represents as agent unless the order is

[124] *See* CBOE Letter 1.

[125] The provision provides several factors that the Exchange will consider, among other things, in determining whether an EAM or beneficial owner effectively is operating as a market maker. *See* ISE Rule 717(b).

[126] *See* Timber Hill Letter.

[127] *See* Timber Hill Letter.

[128] *See* ISE Rule 804(e)(1) and (2).

[129] *See* ISE Rule 803(c)(1).

[130] This responsibility arises only when the aggregate ISE BBO falls below ten contracts, not when the size of an individual quote or order falls below this level. Hence, multiple quotes or orders for less than ten contracts may be on the order book at the ISE BBO without creating the need for the PMM to step in, so long as the aggregate size of the ISE BBO is equal to or greater than ten contracts.

[131] *See* ISE Rule 803(c)(1).

[132] The Commission notes that the ISE intends to propose, through a Rule 19b–4 rule filing, that this timeframe be reduced to thirty seconds. The Commission intends to publish the proposal in the **Federal Register** for comment.

first given the opportunity to interact with other trading interest on the Exchange. It is designed to prevent an EAM from internalizing order flow and to provide added opportunity for price competition.

Several commenters express concern that the System would permit its members to internalize a significant amount of order flow.[133] They assert that the ISE's rules contain loopholes that would permit members to internalize order flow. The ISE, in order to preclude internalization of a significant amount of order flow, has rules that would prevent an EAM from entering nearly simultaneous customer and proprietary orders before there is an opportunity for the customer order to interact with other trading interest on the ISE.

The Commission believes that the restrictions on EAMs trading as principal with orders they represent as agent, the limitations on solicited orders, as well as the three interpretations (discussed below) that the ISE has adopted should adequately protect against the internalization of order flow by an EAM.[134]

(1) Prohibition on the Disclosure of Agency Orders

Commenters have said that under the ISE's rules, an EAM might be able to internalize orders indirectly through arrangements with third parties. In response, the ISE has adopted supplementary material to Rule 400 (Just and Equitable Principles of Trade) to address the concerns that a member might disclose certain information to a third party regarding agency orders.[135] Specifically, a member will be prohibited from disclosing to a third party [136] information regarding agency orders represented by the member prior to entering such orders into the ISE's System in order to allow the third party to attempt to execute against the member's agency orders. A member's disclosing information regarding agency orders prior to the execution of such orders on the ISE would provide an inappropriate informational advantage to the third party in violation of Rule 400.

The Commission believes that this interpretation should help to prevent an EAM from doing indirectly what it is prohibited from doing directly. The provision should prove beneficial in preventing members from ''gaming'' the System. Specifically, the interpretation is designed to ensure that members do not circumvent the intent to prohibit a firm from acting as both principal and agent unless the firm's agency orders have been exposed on the ISE for at least two minutes. An EAM generally must expose orders it represents as agent before it may execute them as principal. Absent the prohibition on the disclosure of this type of information, a member and a third party could potentially use the ISE to execute their orders with each other without exposing these orders to other trading interest. The Commission believes that this interpretation will do much to prevent a firm from trading as principal with orders it represents as agent with a third party with whom it shares a beneficial interest. In the Commission's view, this interpretation should prove helpful in curbing a firm's ability to internalize order flow.

(2) Prohibition on Trading Via Prearranged Transactions

The ISE represents that the intent of Rule 717(d) is to prevent an EAM from executing agency orders to increase its economic gain by trading against an order without first giving other trading interest on the ISE an opportunity to either trade with the agency order or to trade at the execution price when the EAM was already bidding or offering on the ISE book. Nevertheless, the ISE recognizes that it may be possible for an EAM to establish a relationship with a customer to realize similar economic benefits as it would achieve by executing agency orders as principal. To address this issue, the ISE has adopted supplementary material to provide that it will be a violation of Rule 717(d) for an EAM to be a party to any arrangement designed to circumvent Rule 717(d) by providing an opportunity for a customer to regularly execute against agency orders handled by the EAM immediately upon their entry into the System.[137] The Commission believes that this interpretation should be helpful in preventing an EAM from thwarting the restrictions on trading as principal. This interpretation is also a suitable prophylactic measure against possible gaming, mentioned above, of trading in the System.

e. Limits on Solicited Orders

ISE Rule 717(e) requires EAMs to expose orders they represent as agent on the ISE for at least two minutes before they may be executed in whole or in part by orders solicited from members and non-member broker-dealers to interact with such orders. This effectively requires an EAM to give agency orders an opportunity to interact with trading interest on the ISE before executing such orders against orders the EAM solicits from other broker-dealers. This provision does not limit an EAM's ability to cross an agency order with a solicited customer order.

One commenter questioned whether the ISE was attempting to distinguish between the solicitation of public customer orders from the solicitation of broker-dealer orders for the purposes of this rule.[138] The ISE represents that it distinguishes between public customer orders and broker-dealer orders in order to achieve a balance between the interests of EAMs and market makers.

The Commission notes that solicited public customer orders are currently treated differently on the CBOE and the Amex. The CBOE requires that orders solicited from a public customer be exposed to the trading crowd prior to an upstairs firm executing an order it represents as agent with that solicited order. In contrast, the Amex does not require an upstairs firm to present to the trading crowd an order solicited from a public customer prior to the upstairs firm crossing that order with an order it represents as agent.[139] The ISE has opted to follow the rule as it exists on Amex.

The ISE has adopted supplementary material to clarify that it will be a violation of ISE Rule 717(e) for an EAM to cause the execution of an order it represents as agent on the ISE by orders it solicited from members and non-member broker-dealers to transact with such orders, whether such solicited orders are entered into the System directly by the EAM or by the solicited party (either directly or through another member), if the member fails to expose those orders on the Exchange as required by ISE Rule 717(e).[140] The Commission believes that this interpretation is appropriate because it clarifies that solicited orders must be exposed on the System regardless of who enters such orders.

Overall, the Commission believes that requiring exposure on the ISE of orders solicited by an EAM should help to proscribe potential internalization of customer order flow by a firm representing an order as agent.

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[1] *See, e.g.,* Sutherland, Asbill, and Brennan Letters 2, and 3; CBOE Letter 1.

[134] *See* Amendment No. 2.

[135] *See* Amendment No. 2.

[136] For purposes of this provision, a third party includes any other person or entity, including affiliates of the member.

[137] *See* Amendment No. 2.

[138] *See* CBOE Letter 1.

[139] The Commission notes that in 1998 the Amex proposed to adopt a rule similar to the CBOE's regarding the treatment of solicited public customer orders. The filing was withdrawn by the Amex. *See* File No. SR–Amex–98–19.

[140] *See* Amendment No. 2.

f. Restrictions on the Electronic Generation of Orders

ISE Rule 717(f) prohibits members from entering, or permitting the entry of, orders created and communicated electronically without manual input unless such orders are non-marketable limit orders to buy (sell) that are priced higher (lower) than the best bid (offer) on the ISE (*i.e.*, limit orders that improve the best price available on the Exchange).[141] This provision is not designed, however, to prohibit EAMs from electronically communicating to the ISE orders manually entered by customer orders into front-end communications systems (*e.g.,* internet gateways, online networks).

Certain commenters criticize this provision by noting that the rule was likely created to prevent day traders with automated trading systems from sending orders to the ISE whenever they identify an arbitrage opportunity that could be capitalized by trading the option on the ISE and another related option on another exchange.[142] One commenter argues that because the Commission has rejected similar rule proposals in the past, the ISE should not be permitted to have such a rule.[143]

The Commission shares commenters' concerns that these provisions inhibit competition between automated customers and ISE market makers. In the equity markets, limit orders from active customers have been a valuable source of quote competition. Nonetheless, the Commission recognizes that the ISE's business model depends on market makers for competition and liquidity. Unlike flat open systems used elsewhere in the world, customer orders in ISE receive priority over market makers. Allowing electronic entry directly into a fully automated system could give automated customers a significant advantage over market makers. This could undercut the ISE business model. Moreover, the ISE's prohibition on electronically entered limit orders matching the best bid and offer still allows limit orders at improved prices. For these reasons, the Commission is unable to conclude that this limitation violates the statutory requirements. In the future, however, this limitation may need to be reviewed in light of experience with the ISE.

F. Listing Procedures

The Commission notes that the ISE has filed its proposed listing procedures in Amendment No. 2. These procedures reflect those used by the existing exchanges trading standardized options and under which The Options Clearing Corporation (''OCC'') operates. Although these procedures were not published in the **Federal Register** for notice and comment, the Commission notes that they have previously been approved for use by other exchanges after notice and comment.[144] Accordingly, the Commission believes that, in the interest of uniformity, it is appropriate to approve these procedures as part of the ISE's exchange registration.

G. Fees

The ISE has not included its proposed fee schedule in its registration application. Generally, changes to exchange fees are filed pursuant to Section 19(b)(3)(A) of the Exchange Act and are effective upon filing.[145] The ISE, however, will submit a rule filing regarding its fees pursuant to Section 19(b)(1) [146] and Rule 19b–4 [147] thereunder prior to beginning trading. This will enable the fees to be published in the **Federal Register** for notice and comment, prior to Commission action. The Commission must find that the ISE's proposed fees are consistent with Section 6(b) of the Act,[148] in general, and further the objectives of Section 6(b)(4) [149] in particular, in that they will provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

H. Miscellaneous

Recognizing that the ISE is a new, fully electronic options exchange, the Commission believes it would be unwise and impracticable, at the outset, to cast the Exchange into a preconceived mold. The Commission believes that the ISE's governance provisions and trading rules are sufficiently clear for the purposes of granting it exchange registration. Requiring the ISE to provide a high degree of specificity with respect to certain of its rules before registration as an exchange is likely unfeasible because it will be difficult for the ISE to determine exactly who or what decisions may need to be made until the Exchange actually begins operating. As the ISE gains experience, the Commission expects that the Exchange will take appropriate steps to ensure, among other things, that its rules continue to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. However, as noted above, the ISE will be required to file certain rule changes with the Commission pursuant to Rule 19b–4 under the Exchange Act prior to beginning trading.[150]

The Commission also notes that the ISE will need to enter into several regulatory agreements and plans before it may begin trading. Specifically, the ISE must join the Plan for the Reporting of Consolidated Options Last Sale Reports and Quotation Information (known as the Options Price Reporting Authority), the OCC, the Intermarket Surveillance Group Agreement, the Joint-Exchange Options Plan, and the Options Sales Practice Agreement. In addition, as mentioned above the ISE intends to enter into a Rule 17d–2 agreement with NASD Regulation. This agreement must be filed with and approved by the Commission.

IV. Conclusion

An appropriate order granting exchange registration will issue.

By the Commission (Chairman Levitt and Commissioners Johnson, Hunt, Carey and Unger).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4976 Filed 3–1–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42455; File No. 10–127]

In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Order Granting Registration as a National Securities Exchange

February 24, 2000.

The International Securities Exchange LLC, having filed an application with the Commission for registration as a national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934 (''Exchange Act''); and

In reviewing the ISE's registration application, the Commission has weighed the particular rule provisions

[141] *See* Amendment No. 2.

[142] *See, e.g.,* CBOE Letters 1 and 2.

[143] *See* CBOE Letters 1 and 2. The Commission notes that the proposals that the CBOE is referring to dealt primarily with the definition of a ''public customer.'' See File Nos. SR–CBOE–93–20, SR–CBOE–95–23, and SR–CBOE–96–07.

[144] *See* Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48594 (September 25, 1991) (order approving the Joint-Exchange Options Plan).

[145] 15 U.S.C. 78s(b)(3)(A).

[146] 15 U.S.C. 78s(b)(1).

[147] 17 CFR 240.19b-4.

[148] 15 U.S.C. 78f(b).

[149] 15 U.S.C. 78f(b)(4).

[150] *See* 17 CFR 240.19b-4.

against the regulatory objectives of the Exchange Act. Among other things, those objectives embody the concept that exchanges will deal fairly with the public; that exchanges will be organized in such a fashion as to ensure their continued viability in asserting self-regulatory oversight over their members; and that exchanges may, so far as is consistent with other regulatory objectives of the Act, maintain competitive viability with other exchanges. Applying these criteria, the Commission finds it in the public interest to declare effective the registration of the ISE on the basis of its present rules; and

It appearing to the Commission that the rules of the exchange provide for the expulsion, suspension or disciplining of a member for conduct or proceeding inconsistent with just and equitable principles of trade and declare that the willful violation of any provisions of the Exchange Act, or of any rule or regulation thereunder, shall be considered conduct or proceeding inconsistent with just and equitable principles of trade; and It further appearing that the exchange is so organized as to be able to comply with the provisions of the Exchange Act and the rules and regulations thereunder, and that the rules of the exchange are just and adequate to insure fair dealing and to protect investors; and

Finally, it appearing that the rules of the exchange do not impose any burden on competition that is not necessary or in furtherance of the purposes of the Exchange Act;

It is ordered that the application of the International Securities Exchange LLC for registration as a national securities exchange be, and hereby is, granted.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4977 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42456, File No. 4–429]

Joint Industry Plan; Notice of Filing of Proposed Option Market Linkage Plans by the American Stock Exchange, Chicago Board Options Exchange, Pacific Exchange, and Philadelphia Stock Exchange

February 24, 2000.

I. Introduction

On January 19, 2000, pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act'')[1] and an order issued by the Securities and Exchange Commission (''SEC'' or ''Commission''),[2] the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), Pacific Exchange, Inc. (''PCX''), and Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Commission proposed plans for the purpose of creating and operating an inter-market option linkage (''plans'').[3] As discussed below, Amex and CBOE filed identical plans (the ''Amex/CBOE plan'') and PCX and Phlx filed separate plans. Although the four exchanges achieved consensus on the majority of issues pertaining to a linkage, disagreement remains on several significant matters. Specifically, the exchanges failed to agree about whether the linkage should require routing of orders based on price/time priority,[4] who should have access to the linkage, and the appropriate remedy owed when one market trades at a price inferior to that displayed on another market (known as a ''trade-through''). Pursuant to Rule 11Aa3–2(c)(1), the Commission is publishing this notice of, and soliciting comments on, the Amex/CBOE plan. The Commission is also publishing this notice of the PCX and Phlx plans, which differ from the Amex/CBOE plan with respect to certain elements which the Commission is considering including in a linkage plan[5] and as to which the Commission therefore also seeks comments.

II. Background

In 1975, Congress directed the Commission to oversee the development of a national market system.[6] At the time, the trading of standardized options was relatively new.[7] As a result, the Commission deferred applying to the options markets many of the national market system initiatives that applied to the equity markets to give options trading an opportunity to develop. Nevertheless, since the establishment of the options exchanges, the Commission has repeatedly called for market integration facilities for the options markets.[8] In 1991, in response

[1] 17 CFR 240.11Aa3–2.

[2] On October 19, 1999, the Commission issued an Order directing the exchanges to file a national market system plan for linking the options markets within 90 days. Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999) (''October 19, 1999 Order'').

[3] The Commission's October 19, 1999 Order also requested the International Securities Exchange (''ISE'') to participate with the options exchanges in the development of an inter-market linkage plan. The ISE has filed an application with the Commission to register as a national securities exchange. *See* Securities Exchange Act Release No. 41439 (May 24, 1999) 64 FR 29367 (June 1, 1999). The ISE submitted a plan identical to that filed by Amex and CBOE. Because the Commission has not approved the ISE's application for registration as a national securities exchange, however, the ISE may not be a signatory to a linkage plan at this time.

[4] Both PCX and Phlx propose price/time priority as an element of the linkage. Price/time priority generally requires that if an exchange receives an order but it is not the first exchange to display the best price, that exchange must route the order to the exchange that was first at the best price. PCX and Phlx propose a number of textual distinctions from the Amex/CBOE plan to incorporate price/time priority. In the Phlx plan, many of the proposed modifications to the Amex/CBOE plan relate to an expanded role for the facilities manager. Although the term ''facilities manager'' is not defined in the plans, it is presumed by the plans to be an outside vendor who may be selected to build and operate a system linking the options exchanges' existing systems.

[5] Rule 11Aa3–2 specifically provides that the Commission may approve a proposed national market system plan ''with such changes or subject to such conditions as the Commission may deem necessary or appropriate.''

[6] Pub. L. No. 94–29 Stat. 97 (1975).

[7] The trading of standardized options on securities exchanges began in 1973, with the organization of CBOE as a national securities exchange. *See* Securities Exchange Act Release No. 9985 (February 1, 1973) 1 S.E.C. Doc.11 (February 13, 1973). Subsequently, the Commission approved options pilot programs at Amex, Phlx, PCX, and the Midwest Stock Exchange (''MSE''). The New York Stock Exchange (''NYSE'') began trading options in 1985. *See* Securities Exchange Act Release No. 11144 (December 19, 1974) 40 FR 3258 (January 20, 1975); Securities Exchange Act Release No. 11423 (May 15, 1975) 6 S.E.C. Doc. 894 (May 28, 1975); Securities Exchange Act Release No. 12283 (March 30, 1976) 41 FR 14454 (April 5, 1976); Securities Exchange Act Release No. 13045 (December 8, 1976) 41 FR 54783 (December 15, 1976); and Securities Exchange Act Release No. 21759 (February 14, 1985) 50 FR 7250 (February 21, 1985). The MSE's options program was merged into the CBOE's program in 1979. The NYSE sold its options business to CBOE in 1997. Currently, Amex, CBOE, PCX, and Phlx are the only national securities exchanges that trade standardized options.

[8] *See* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978) (examining the major issues of market structure in standardized options markets, including multiple trading); Securities Exchange Act Release No. 16701 (March 26, 1980) 45 FR 21426 (April 1, 1980) (deferring expansion of multiple trading to afford the options exchanges an opportunity to consider the development of market integration facilities); Securities Exchange Act Release No. 22026 (May 8, 1985) 50 FR 20310 (May 15, 1985) (urging options market participants to consider the development of market integration facilities); Directorate of Economic and Policy Analysis, ''The Effects of Multiple Trading on the Market for OTC Options'' (November 1986); Office of the Chief Economist, ''Potential Competition and Actual Competition in the Options Market'' (November 1986); Securities Exchange Act Release No. 26871 (May 26, 1989) 54 FR 24058 (June 5, 1989) (requesting comment on three measures, including an inter-market linkage). In 1989, the Commission adopted Rule 19c-5, which generally prohibits any exchange from adopting rules limiting its ability to list any stock option class because that option class is listed on another exchange. *See* Securities Exchange Act Release No. 26870 (May 26, 1989) 54 FR 23963 (June 5, 1989). In proposing Rule 19c-5, the Commission acknowledged that market integration facilities were unlikely to be built voluntarily if they were a prerequisite to

to these calls, four of the five options exchanges submitted a proposal for the development of a linkage.[9] The plan was never adopted, in part, because a consensus among the exchanges could not be achieved regarding the feasibility of implementing a single linkage plan.

In February of 1999, Chairman Levitt wrote to the options exchanges expressing the need to develop system linkages and data processing facilities between the options markets.[10] On October 1, 1999, the Chairman again wrote to the options exchanges requesting their cooperation and consensus on an inter-market linkage plan.[11] On October 19, 1999, with no substantial progress having been made by the options markets to develop a linkage, the Commission ordered the markets to submit a linkage plan within 90 days.[12] The Commission required that, at a minimum, any plan submitted under the October 19, 1999 Order must include uniform trade-through rules and an expanded definition of public customer to include agency orders presented by competing exchanges.[13] On January 19, 2000, Amex and CBOE submitted the Amex/CBOE plan and PCX and Phlx filed separate plans. The plans diverge on several fundamental issues, the details of which are discussed below.

III. Description of the Plans

The three different plans submitted by the respective exchanges reflect numerous areas of agreement between the exchanges.[14] A brief summary of each section of the plans, highlighting their distinctions, is provided below. The full text of the separate plans submitted by the options exchanges is available on the Commission's website at *www.sec.gov,* at the principal offices of the options exchanges, and at the Commission.

A. Definitions

Section 2 of each of the plans defines specific terms for purposes of the plans.[15] With minor exceptions, the definitions proposed in each of the plans are generally consistent. For example, the plans define three types of ''linkage orders'': (1) ''Principal acting as agent (''P/A'') order,'' defined as an order for the principal account of a ''market maker'' authorized to represent customer orders reflecting the terms of a related unexecuted customer order for which the market maker is acting as agent; (2) ''principal order,'' defined as an order for the principal account of an ''eligible market maker'' that is not a P/A order; and (3) ''satisfaction order,'' defined as an order for the principal account of an exchange member who initiated a trade-through that is sent through the ''linkage'' to satisfy the trade-through liability.

As discussed below, the plans differ on the extent to which market makers should get access to the linkage with respect to proprietary business. The definition of ''eligible market maker'' is important because it delineates which market makers are eligible to participate in the linkage for their proprietary accounts. An ''eligible market maker'' is defined in the plans of Amex, CBOE, and PCX with respect to an ''eligible options class,'' as a ''market maker'' that: (i) Is assigned to, and is providing two-sided quotations in, the eligible option class; (ii) is participating in its market's automatic execution system in such eligible option class; and (iii) is not prohibited from sending ''principal orders'' in such eligible option class through the linkage pursuant to the plan. These prohibitions are discussed below. Phlx would delete item (iii) of the definition to indicate its support for broader access to the linkage.

The term, ''firm customer quote size,'' is defined in each of the plans. Under the plans submitted by Amex, CBOE, and Phlx, the exchange that receives a linkage order that is for a customer (*i.e.,* non-broker-dealer) account must guarantee automatic execution for at least ten contracts and up to the number of contracts guaranteed automatic execution for orders entered directly on the exchange. PCX's plan would require that a market be firm for at least 20 contracts for linkage orders for customer accounts up to the same maximum as the others. All of the plans define ''firm principal quote size'' as the number of contracts for principal orders that a receiving exchange will guarantee to execute. This number is 10 contracts under all of the plans.

B. New Parties to the Plan

Section 4 of each of the plans contains an identical, self-effecting provision for the admission of new participants, in which eligible exchanges[16] may become a party to the plan by: (1) Executing a copy of the plan, as then in effect; (2) effecting an amendment to the plan reflecting the addition of the new participant's name; and (3) paying the applicable fee, as discussed below.

C. Administration of the Plan

Each of the plans provides, in Section 5, for an Operating Committee, to be composed of one representative of each participating exchange, responsible for: (1) Overseeing the development and implementation of the linkage; (2) monitoring the exchanges' use of the linkage; and (3) advising the participant exchanges regarding the operation of the linkage. The plans also uniformly provide for the creation of a Member Advisory Committee, to be composed of between one and three members from each participating exchange, to advise the Operating Committee on linkage matters. Each participating exchange would have one vote on all matters considered by the Operating Committee and the Member Advisory Committee, respectively. Votes, except as otherwise specified in the plan, would be decided by a majority of a quorum of the Operating Committee.

The plans uniformly propose that amendments to the plan, other than with respect to the addition of new participants, as discussed above, may be effected only with the unanimous approval of the participating exchanges, and the approval of the Operating Committee and the Commission. The plans also provide a mechanism for dispute resolution, as discussed below.

D. Linkage Overview

Section 6 of each of the plans sets forth the responsibilities of each participating exchange for providing a linkage supervisory function to oversee

multiple trading. *See* Securities Exchange Act Release No. 24613 (June 18, 1987) 52 FR 23849 (June 25, 1987). In 1990, then Chairman Breeden requested that the options exchanges develop an inter-market linkage plan. *See* Letter from Chairman Breeden to the Registered Options Exchanges dated January 9, 1990.

[9] *See* Securities Exchange Act Release No. 30187 (January 14, 1992) 57 FR 2612 (January 22, 1992) (soliciting comments on an inter-market linkage plan submitted by four out of five options exchanges).

[10] *See* Letters from Arthur Levitt, Chairman, SEC, to Richard F. Syron, Chairman and Chief Executive Officer, Amex; William J. Brodsky, Chairman and Chief Executive Officer, CBOE, Robert M. Greber, Chairman and Chief Executive Officer, PCX; and Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; dated February 10, 1999.

[11] *See* Letters from Chairman Levitt, to Salvatore Sodano, Chairman and Chief Executive Officer, Amex; William J. Brodsky, Chairman and Chief Executive Officer, CBOE; Philip D. DeFeo, Chairman and Chief Executive Officer, PCX; and Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; dated October 1, 1999.

[12] *See* note 2, *supra.*

[13] *Id.*

[14] As previously noted, Amex and CBOE filed identical plans and ISE has stated its intent to execute the Amex/CBOE plan as a signatory should the Commission grant the ISE's application for registration as a national securities exchange. *See* notes 3 and 4 and accompanying text, *supra.*

[15] Section 1 of the each plan contains a non-substantive preamble.

[16] The plans define an ''eligible exchange'' as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that is a participant in the Options Clearing Corporation (''OCC'') and a party to the Options Price Reporting Authority (''OPRA'') Plan.

the linkage and resolve inter-market trade problems. Administrative messages, either in free form or fixed format, could be sent through the linkage under all of the proposals. The Operating Committee would be authorized to determine how the linkage should be built and operated, including whether to select a facilities manager. The Operating Committee's decisions with respect to the selection of a facilities manager would require an affirmative vote of at least two-thirds of the members of the entire Operating Committee.

With respect to the implementation of the linkage, the Amex/CBOE plan and the Phlx plan would grant the Operating Committee the authority to phase in the implementation of the linkage. The PCX, however, specifically proposes a multiple phase implementation, as discussed further below. Under the PCX plan, the participating exchanges would conduct a study to assess the impact of the linkage during Phase I and, based on that study, develop an amendment to the plan for a second phase.

E. Linkage Operations

In Section 7 of the plans, the exchanges set forth the specific mechanics of the linkage. With respect to eligible option classes, each participating exchange would be required to furnish to OPRA the current bid-ask quotation emanating from its market. These quotations would be considered ''firm'' to the extent provided in the plans.[17]

1. Amex/CBOE Linkage Plan

The Amex/CBOE linkage plan proposes that the linkage be used for either customer orders, where the market maker chooses not to ''step-up'' to match a better price displayed on an away market, or principal orders.

(a) P/A Orders Eligible for Automatic Execution

The Amex/CBOE linkage plan would permit the transmission of a P/A order for execution in the automatic execution system of a participating exchange at the best price (''NBBO'')[18] if the size of the P/A order is no larger than the firm customer quote size. The exchange receiving the P/A order through the linkage must execute it in its automatic execution system, if available, if its disseminated quotation is equal to or better than the limit price attached to the linkage order by the sending exchange (''reference price'')[19] when the order arrives at the receiving exchange. The receiving exchange must immediately report the trade to OPRA. Except in limited circumstances, the proposal would not permit customer orders larger than the firm customer quote size to be broken up into multiple orders. Members would be prohibited from sending P/A orders eligible for automatic execution at a price inferior to the NBBO.

(b) P/A Orders not Eligible for Automatic Execution

With respect to P/A orders not eligible for automatic execution in the receiving market because the size of the order is larger than the firm customer quote size, the Amex/CBOE linkage plan provides two alternatives. First, a P/A order representing the entire customer order may be sent through the linkage. If the receiving exchange's disseminated quotation is equal to or better than the reference price of the incoming linkage order, the receiving exchange must execute that order for at least the firm customer quote size. Within 15 seconds of receipt of the order, the receiving exchange must inform the sending exchange of the amount of the order that was executed and the amount, if any, that was canceled. In the alternative, the sending exchange may send an initial P/A order for the firm customer quote size. If the receiving exchange executes that order and continues to disseminate the same quote at the NBBO 15 seconds after reporting the execution of the initial P/A order, the sending exchange may send a second P/A order. If it chooses to send the second order, that order must be for the lesser of 100 contracts or the entire remainder of the customer order the sending exchange is representing. Under either alternative, if the receiving exchange does not execute the entire P/A order, it must move its quote to a price inferior to the reference price of the P/A order.

(c) Handling of Principal Orders

For principal orders, the Amex/CBOE proposal would allow eligible market makers, as defined above, to send orders on behalf of their principal trading accounts as principal orders at the NBBO. If the principal order is not larger than the ''firm principal quote size,'' the receiving exchange must execute the order in its automatic execution system, if available, if its disseminated quotation is equal to or better than the reference price when the order arrives at the receiving exchange. If the principal order is larger than the firm principal quote size, the receiving exchange must execute the order in its automatic execution system for at least the firm principal quote size and within 15 seconds of receipt of such order, inform the sending exchange of the amount of the order that was executed and the amount, if any, that was canceled. If the receiving exchange does not execute the entire principal order, it must move its quote to a price inferior to the reference price of the principal order. The sending exchange is not permitted to send a second principal order in the same eligible option class for at least 15 seconds after it sent the first principal order unless the receiving exchange changes its price and the price is at the NBBO. After the 15 second period, and until there is a change in the receiving exchange's disseminated quote, the exchange that initially sent the principal order for automatic execution may send only principal orders for greater than the firm principal quote size. The restriction on sending principal orders for automatic execution would expire one minute after the automatic execution of the first principal order.

(d) Obligations for Failure to Respond to Linkage Orders

A member that sends a P/A order or principal order through the linkage and who does not receive a reply within 30 seconds may reject any response received thereafter purporting to report a total or partial execution of that order. The member that sent the original order must inform the receiving exchange that it is rejecting the response within 15 seconds of receiving it. Upon receiving the rejection, the receiving exchange must report a cancellation to OPRA.

2. PCX Linkage Plan

The PCX proposal would incorporate a price/time priority feature into a phased implementation schedule for customer orders for 20 contracts or less.[20] Specifically, the PCX proposes

[17] The plans also uniformly propose procedures for the minimum information to be included in a linkage order, order validation, routing, responses, and partial executions.

[18] The plans uniformly define the term ''NBBO'' as the national best bid and offer in a series of an eligible option class calculated by a participating exchange.

[19] Except with respect to a ''satisfaction order,'' defined above, the reference price is equal to the quotation disseminated by the receiving exchange at the time the linkage order is transmitted. With respect to a ''satisfaction order,'' the reference price is the price to which the member in the sending exchange is entitled pursuant to the linkage plan.

[20] On November 10, 1999, Chairman Levitt requested the options exchanges and ISE to submit within thirty days a detailed statement of their views on whether incorporating price/time priority into an inter-market linkage plan would be beneficial to investors and the options markets. *See* Letters from Chairman Levitt, to Salvatore Sodano, Chairman and Chief Executive Officer, Amex; William J. Brodsky, Chairman and Chief Executive Officer, CBOE; Philip D. DeFeo, Chairman and

that during Phase I, customer orders for 20 contracts or less may be automatically executed by the exchange initially receiving the order only if that market is disseminating a quotation with price and time priority or, if the market is at the NBBO (although not first in time) and provides price improvement for that order.[21] If the exchange initially receiving the order is not at the NBBO when it receives the order, that exchange must automatically generate a P/A order and send it for execution to the away market that is disseminating a quotation with price and time priority, so long as the away market provides a firm customer quote size of at least 20 contracts in that particular eligible option class.

The PCX plan virtually mirrors the Amex/CBOE proposal with respect to the handling, during Phase I, of P/A orders not eligible for automatic execution in the receiving market (*i.e.,* orders for more than 20 contracts), principal orders, and other matters, such as restrictions on breaking up customer orders that are larger than the firm customer quote size. The PCX plan, however, differs from the other plans with respect to locked and crossed markets. The Amex/CBOE and Phlx plans propose language stating that the dissemination of locked and crossed markets must be avoided and that the participating exchanges will file with the Commission for approval uniform rules for unlocking and uncrossing markets. The PCX, conversely, would permit principal orders to be sent through the linkage for the purpose of unlocking or uncrossing markets.[22]

3. Phlx Linkage Plan

The Phlx proposal incorporates strict price/time priority, requiring each exchange to build a front-end system to route, as P/A orders, either directly through the linkage or to the facilities manager, all customer orders eligible for automatic execution where the exchange initially receiving the order was not the first to disseminate the best price. The Phlx proposal parallels the Amex/CBOE and PCX proposals with respect to other aspects of handling linkage orders for customer accounts, including the obligations on the exchange that receives a linkage order.

The Phlx plan tracks the Amex/CBOE and PCX plans with respect to the handling of principal orders, except that the Phlx proposal incorporates strict price/time priority and prohibits an eligible market maker from sending through the linkage principal orders not only at a price inferior to the NBBO, but also at a price equal to or inferior to the market quote disseminated on the eligible market maker's exchange.

4. ISE Alternative Proposal

In its transmittal letter, the ISE proposes an alternative plan for handling P/A orders. Under the terms of its proposal, member firms would be permitted to route orders to the exchange of their choice. If an exchange is quoting at the NBBO when it receives an order (regardless of whether it was the first market to quote at that price), that exchange would be permitted to execute the order and would owe no obligation to away markets. If, however, the exchange to which the order is initially routed by the member firm is not quoting at the NBBO when it receives the order, a market maker on that exchange may step up to match the best price and execute the order. If an away market that was quoting at the NBBO complains, however, the market that matched the NBBO would be required to provide ''specified protection'' [23] to those customer limit orders on the book of the complaining away market. If the exchange that receives the order from the member firm decides not to step up, it must route the order through the linkage based on price-time priority. The alternative proposal suggested by the ISE is here because it is not included in the plans submitted by the exchanges. Although the ISE's alternative proposal was not addressed specifically by any other exchanges, both Amex and CBOE's transmittal letters stated a commitment to further study the issue of customer limit order protection.

F. Implementation Obligations

1. Access to the Linkage

Section 8 of each of the plans sets forth, among other things, requirements relating to access to the linkage and order protection. With respect to P/A access, all of the plans agree that the linkage should not be used as an order delivery system in which all or a substantial portion of customer orders are routed through the linkage.

There are several significant differences between the plans with respect to appropriate limitations on principal access to the linkage. The Amex/CBOE plan proposes an ''80/20 Test,'' which would be applied each calendar quarter and would limit principal access in the subsequent calendar quarter based on customer order volume executed on the principal's exchange.[24] Under this test, a market maker that effected 20 percent or more of its market maker volume by sending principal orders through the linkage in a calendar quarter would be prohibited from sending principal orders through the linkage for the next calendar quarter (*i.e.*, would not be an ''eligible market maker'' for that period). The PCX proposes to prohibit the transmission of principal orders, except to unlock or uncross markets or to satisfy trade-through liability. Under the Phlx plan, eligible market makers would be permitted to send principal orders through the linkage without limitation, so long as the market maker meets the Phlx's proposed definition of ''eligible market maker.'' [25]

2. Order Protection

The exchanges all propose to prohibit trade-throughs (with certain exceptions discussed below), absent reasonable justification and during normal market conditions. The plans propose uniform exceptions to trade-through liability, including, among other things, systems malfunction, failure of the receiving market to respond to a P/A or principal order within 30 seconds, failure of the market traded through to complain within the specified time period, complex trades (to be defined by the Operating Committee), trading rotations, and non-firm quotations on the market that was traded through.

The plans propose identical language with respect to the responsibilities and rights of the participating exchanges following trade-through complaints and the proposed provisions relating to notice and mitigation of damages.

Chief Executive Officer, PCX; and Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; dated November 10, 1999. The options exchanges and the ISE set forth their positions on this issue in their response letters, dated December 10, 1999. *See* Letters to Chairman Levitt, from Salvatore F. Sodano, Chairman and Chief Executive Officer, Amex; William J. Brodsky, Chairman and Chief Executive Officer, CBOE; Philip D. DeFeo, Chairman and Chief Executive Officer, PCX; and Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; dated December 10, 1999.

[21] If the exchange receiving the order is at the NBBO but does not have time priority and is not willing to provide price improvement, it must send a P/A order to the away market that is at the NBBO with time priority.

[22] In fact, as discussed below, the PCX proposes to permit principal access to the linkage only to send orders to unlock or uncross markets or to satisfy trade-through liability.

[23] ISE did not define the term ''specified protection'' in its transmittal letter. The Commission seeks public comment on how, if at all, that term should be defined. *See* Section IV.

[24] Incoming P/A orders, but not outgoing P/A orders would be included in this calculation.

[25] As noted above, Phlx defines an ''eligible market maker'' as a ''market maker'' that is assigned to, and is providing two-sided quotations in, the eligible option class and is participating in its market's automatic execution system in such eligible option class.

With one exception, the exchanges agree on the appropriate satisfaction of trade-throughs, either by satisfying the complaining market, adjusting the price, or canceling the trade. If customer orders constituted either or both sides of the transaction involved in the trade-through, each customer order would receive the price of the trade that caused the trade-through, or the satisfaction price, if the trade-through was satisfied, or the adjusted price, if there was an adjustment, whichever price is most beneficial to the customer order. The member initiating the trade-through is responsible for any differences.

The plans uniformly propose rules regarding the price at which the bid or offer that was traded through must be satisfied, yet differ on the appropriate size of the satisfaction. The satisfaction price would equal the price of the bid or offer, unless the transaction that constituted the trade-through was a block trade,[26] in which case satisfaction would be the price of the transaction that caused the trade-through. With respect to the appropriate size of satisfaction, in the absence of disseminated size, the Amex/CBOE and PCX plans would limit the satisfaction of a trade-through to the verifiable number of customer contracts in the market of each exchange that was traded through that were included in the disseminated bid or offer of that exchange subject to certain limitations. In particular, if the number of contracts to be satisfied in one or more exchanges exceeds the size of the transaction that caused the trade-through, satisfaction will be limited to the size of the transaction that caused the trade-through. Moreover, if the transaction that caused the trade through was for a size larger than the firm customer quote size with respect to any of the exchanges traded through, the total number of contracts to be satisfied to all exchanges will not exceed the size of the transaction that caused the trade through and will be allocated *pro rata* based on the verifiable number of customer contracts traded through on each exchange. In the absence of disseminated size, the Phlx proposal would require that if the transaction was for a size larger than the firm customer quote size, the total number of contracts to be satisfied would not exceed the size of the transaction that caused the trade-through on each exchange that was traded through.

G. Trade Comparison; Error Resolution

The plans submitted to the Commission propose uniform procedures for trade comparison and error resolution, set forth in Section 9 of the plans.

H. Trading Halts and Suspensions, Non-Firm Quotations, and Hours of Operation

In Section 10 of the plans, the exchanges uniformly propose procedures for trading halts and suspensions and non-firm quotations. Specifically, each exchange reserves the right to halt or suspend trading or declare market conditions to be non-firm in its market. In addition, where a particular market is closed, has halted or suspended trading, has not yet opened for trading, or has disseminated notice to the other linkage plan participants that its quotations are not firm in a particular options class, linkage orders may be neither sent to that exchange nor accepted by it through the linkage. In a scenario in which the exchange sending the linkage order halts or suspends trading, or declares its quotations to be non-firm subsequent to the transmission of a linkage order, the linkage order must be accepted and handled by the receiving exchange pursuant to the provisions of the linkage plan, unless the receiving exchange also halts or suspends trading, or declares its quotations to be non-firm.

I. Financial Matters

The plans all propose, in Section 11, to divide the development and operating costs of the linkage equally among the participant exchanges, while each exchange proposes to be solely responsible for the costs of any modifications to its systems needed to accommodate the linkage. The exchanges propose that the Operating Committee will, at least once a year, establish a participation fee to be charged to any eligible exchange that seeks to become a party to the linkage plan. The participation fee, which is proposed to reflect a new participant's pro-rata share of the costs of developing, maintaining, and enhancing the linkage, will be distributed equally to the then-current participating exchanges.

J. Withdrawal From the Plan

Section 12 of the plans provides that any participating exchange may withdraw from the plan with at least 30 days prior written notice.

K. Implementation of the Plan

The participating exchanges stated that the plan would be implemented upon the Commission's approval of a plan and related rules and the participants' completion of the development of the systems necessary to effectuate the linkage approved by the Commission. The exchanges propose that the linkage will be operable at any time that two or more participating exchanges are open for trading between 9 a.m. and 5 p.m. Eastern time.

L. Development and Implementation Phases

The exchanges expect that there will be a development phase subsequent to Commission approval of a plan. During that time, the Operating Committee will determine the manner in which to build and operate the linkage and whether to select a facilities manager. If the Operating Committee determines to select a facilities manager, it will issue a request for proposals describing the required functionality of the linkage, including a specification that the linkage be developed to accommodate the routing of P/A orders on a price-time basis, should the Commission determine that price/time priority should be a component of the linkage. PCX has proposed a phased implementation schedule, as described above. None of the other plans provide for a phased implementation schedule.

M. Impact on Competition

The plans filed by the exchanges provide for the creation of an inter-market linkage between the options markets. In its October 19, 1999 Order, the Commission found that establishing a linkage among the options markets would benefit investors by increasing competition among markets (and market participants) to provide best execution of customer orders. Given the recent increases in the listing of options classes that are traded on more than one options exchange, the need for an inter-market linkage has become increasingly acute. Without a linkage, the possibility of inter-market trade-throughs, discussed above, becomes increasingly common, to the detriment of investors and other market participants. A linkage between the options exchanges should reduce the frequency of inter-market trade-throughs, and provide a mechanism for satisfying the markets that are traded through when a trade-through occurs.

N. Terms and Conditions of Access

As described above, Section 4 of each of the plans contains an identical, self-effecting provision for the admission of

[26] The plans uniformly define a ''block trade'' as a trade that: (i) Is of block size, defined as 500 or more contracts and a premium value of at least $150,000; (ii) is effected at a price outside of the NBBO; and (iii) involves either a cross (where a member of the exchange represents all or a portion of both sides of the trade) or any other transaction that is not the result of an execution at the current bid or offer on the exchange.

new participants, in which any national securities exchange may become a party to the plan by agreeing, in an amendment to the plan, to comply with the provisions of the plan, and paying the applicable fee.

O. Method of Determination of Imposition, and Amount of Fees and Charges

The plans do not provide for the imposition of any fees or charges associated with the use of the linkage. Section 11 of each of the plans uniformly proposes the allocation among the exchanges of costs associated with the development, implementation, and maintenance of the linkage. As described above, the exchanges propose that the Operating Committee will, at least once a year, establish a participation fee to be charged to any eligible exchange that seeks to become a party to the linkage plan. The participation fee, which is proposed to reflect a new participant's *pro-rata* share of the costs of developing, maintaining, and enhancing the linkage, will be distributed equally to the then-current participating exchanges.

P. Method and Frequency of Processor Evaluation

Under Section 6 of the plans, the Operating Committee may determine to select a facilities manager. The selection of a facilities manager would require the affirmative vote of at least two-thirds of the members of the entire Operating Committee. A decision to remove, or not to renew the contract of, a facilities manager would likewise require the affirmative vote of at least two-thirds of the members of the entire Operating Committee.

Q. Dispute Resolution

Section 5 of each of the plans provides for a mechanism for the resolution of disputes arising under the plan.[27] The proposals provide for a procedure by which a participating exchange may request an interpretive opinion of a rule made by another participant on the application of the plan. The dispute must pertain to a situation involving a minimum loss of $5,000, which must have been established pursuant to the plan, including the mitigation provisions of the plan. All routine internal exchange surveillance reviews relating to the disputed ruling must have been completed prior to the request. Periodic reports on the functioning of, and experience under, the dispute resolution process will be submitted to the Operating Committee for its information and review.

R. Written Understandings or Agreements Relating to Interpretation of, or Participation in, the Plan

Not applicable.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed plans are consistent with the Act. In particular, the Commission seeks comment on the following issues:

1. What are the benefits and detriments of requiring that orders be routed to competing exchanges based on strict price/time priority? Should the plan include price/time priority?

2. Would a linkage that allows a market maker to step up to match the NBBO, but permits an away market to receive an execution if it was displaying a customer limit order at the price of the execution on the exchange that stepped up, provide desirable protection to customer limit orders?

3. How would a linkage system as described in the above question work in practice? Should satisfaction of a ''trade at'' be automatic or on a complaint basis? If by complaint, how long should the market whose limit order was ''traded at'' have to complain?

4. In ISE's alternative proposal, the term ''specified protection'' is not defined. What would be an appropriate level of satisfaction for a ''trade-at''?

5. What other requirements might be imposed on a linkage that could protect customer limit orders on away markets?

6. Because quote size is not disseminated, the plan establishes a firm quote size for customer orders and principal orders and establishes different size criteria for satisfying trade-throughs. What is the appropriate size for these purposes?

7. Should the linkage plan require the options markets to disseminate quotes with size? If so, what time frame is reasonable to implement this proposal? How should the requirement that quote size be disseminated be balanced against concerns about constraints on options systems capacity?

8. Who should have access to the linkage?

9. In what way, if any, should access to the linkage be restricted for orders involving principal accounts?

10. What is an appropriate level of discretion for the proposed Operating Committee? In particular, should it have discretion to define plan terms such as ''complex trade'' as an exception to trade-through liability?

11. In what way, if any, will a linkage plan between the options markets impact competition?

12. Is it useful to require a unanimous vote in order to amend the plan? Would a super-majority (or a simple majority vote) to amend the plan be more or less appropriate than a requirement of unanimity? Under what circumstances, including those included in the plan, should a super-majority be required? Would a simple majority be more appropriate in any of those instances?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of the participating exchanges. All submissions should refer to File No. 4–429 and should be submitted by April 3, 2000.

Dated: April 3, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4978 Filed 3–1–00; 8:45 am]

BILLING CODE 8010–01–P

[27] The proposed dispute resolution process is essentially the same process adopted by the Intermarket Trading System Operating Committee and approved by the Commission. See Securities Exchange Act Release No. 29194 (May 15, 1991) 56 FR 23318 (May 21, 1991).

Federal Register

Thursday,
March 2, 2000

Part IV

Department of Transportation

Coast Guard

33 CFR Part 175 et al.

46 CFR Part 2 et al.

Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175, 177, 179, 181, and 183

46 CFR Parts 2, 10, 15, 24, 25, 26, 28, 30, 70, 90, 114, 169, 175, 188, and 199

[USCG–1999–5040]

RIN 2115–AF69

Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations that implement safety measures for uninspected passenger vessels under the Passenger Vessel Safety Act of 1993 (PVSA). This Act authorizes the Coast Guard to amend operating and equipment guidelines for uninspected passenger vessels over 100 gross tons, carrying 12 or less passengers for hire. These regulations will implement this new class of uninspected passenger vessel, provide for the issuance of special permits to uninspected vessels, and develop specific manning, structural fire protection, operating, and equipment requirements for a limited fleet of PVSA exempted vessels.

DATES: Comments and related material pertaining to 46 CFR 26.03–8 of this rulemaking must reach the Docket Management Facility on or before April 3, 2000. Comments and materials pertaining to the remaining portion of this rulemaking must reach the Docket Management Facility on or before May 31, 2000. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 1, 2000.

ADDRESSES: To make sure your comments and related material are not entered in the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–5040), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call Lieutenant Commander Michael A. Jendrossek, Office of Operating and Environmental Standards (G–MSO–2), Coast Guard, telephone 202–267–0836. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–5040), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½-by-11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Bareboat charter agreements have traditionally been used in the marine industry as a mechanism to allow long-term charterers the ability to assume operational control of a vessel. Under these charter agreements, the charterer assumes the rights and liabilities of ownership of the vessel. The charterer is usually responsible for conducting a pre-and post-charter survey of the vessel, hiring and firing the crew, and establishing the operational schedule of the vessel. Before 1993, the regulatory definitions of ''passenger,'' ''guest,'' and ''consideration'' inadvertently allowed individuals to create short-term vessel charter agreements in order to carry a large number of passengers. Any number of individuals could co-own a boat, like any other personal property. Also, they could carry guests onboard when a vessel was operated for pleasure. These conditions created an environment where a large number of people could be carried aboard an uninspected vessel under the auspice of ownership or recreation.

The Passenger Vessel Safety Act of 1993 (PVSA) (Pub. L 103–206) resolved this situation by clearly defining the following terms: ''consideration,'' ''passenger,'' ''passenger vessel,'' ''small passenger vessel,'' ''uninspected passenger vessel,'' ''passenger-for-hire,'' plus three other terms that are not part of this rulemaking. This would subject some formerly chartered vessels to Coast Guard inspection.

The PVSA also made several changes to the laws for vessels that carry passengers. First, the PVSA required a vessel of less than 100 gross tons to be inspected as a small passenger vessel if it is—

- Carrying more than six passengers, including at least one passenger-for-hire;
- Chartered with crew provided or specified by the owner or owner's representative and carrying more than six passengers;
- Chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers; or
- A submersible vessel carrying at least one passenger-for-hire.

Second, the PVSA provided exemption for certain vessels that were unable to meet inspection criteria. Sixteen vessels applied to the Coast Guard for and four were granted exemptions. The PVSA authorized the Coast Guard to develop specific operating and equipment requirements for these vessels.

Third, the PVSA broadened the definition of uninspected passenger vessel to include vessels of at least 100 gross tons carrying not more than 12 passengers, including at least one passenger-for-hire; or that are chartered with crew provided or specified by the owners or the owners' representatives and carrying not more than 12 passengers. These vessels are commonly referred to as 12-pack vessels.

Vessels of at least 100 gross tons that carry more than 12 passengers, at least one of which is for hire, must be inspected as passenger vessels under Title 46, Code of Federal Regulations (CFR) subchapter H.

Fourth, the PVSA directed the Coast Guard to develop regulations necessary to implement equipment, construction, and operating requirements for uninspected passenger vessels operating as 12-pack vessels.

Fifth, the PVSA authorized the Coast Guard to develop regulations to issue special permits to uninspected vessels, thus broadening authority from the now standard excursion permit for inspected vessels to include special permits for uninspected vessels. Special permits may be issued to an uninspected passenger vessel for charitable purposes up to a maximum of four times in a 12-month period. Special permits may also be issued to the owner or operator of a vessel that is a registered participant in an event that the Commandant, U.S. Coast Guard declares as a Marine Event of National Significance.

On September 30, 1994, the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) No. 7–94 to provide compliance and enforcement guidance to Coast Guard members on implementing the provisions of the PVSA while detailed regulations were being developed. The NVIC addressed the statutory changes in detail, including one of the more significant changes requiring all chartered vessels carrying more than 12 passengers to be inspected by the Coast Guard. The PVSA allowed these vessels to apply for inspection with a phase-in period for compliance. The period for application expired on June 21, 1994, and the period for compliance expired on December 21, 1996. With widespread public notification, several hundred charter vessels applied for and met the conditions for certification with the requirements of the PVSA and policy guidance of the NVIC.

The NVIC also provided extensive guidance to Coast Guard Marine Safety field units on implementing the provisions of the new law. For those interested in viewing a copy of NVIC 7–94, it is available in this rulemaking docket as indicated under **ADDRESSES** and also on the Internet at *www.uscg.mil/hq/g-m/nvic/index90.htm.*

On April 1, 1999, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (64 FR 15709), notifying the public of the intent of this rulemaking and requesting comments in several areas. A complete discussion of the comments follows.

Discussion of Comments

The Coast Guard received nine letters on the ANPRM. One letter provided answers to the 17 questions in the ANPRM. Comments from the other eight letters are summarized below.

One comment states that a second set of regulations should not be created for 12-pack vessels. We agree. The proposed requirements are an addition to existing regulations for uninspected passenger vessels, not a separate set.

One comment contends that safety equipment requirements for uninspected passenger vessels that are less than 100 gross tons operating as 6-packs are entirely appropriate for 12-pack vessels. It further states that people use the lifesaving equipment, so the size of the vessel being abandoned is not relevant. We disagree. Currently, an uninspected passenger vessel operating as a 6-pack vessel is only required to provide a Type I Personal Flotation Device (PFD) for each passenger, one ring buoy (for a vessel 26 feet in length and longer), and comply with recreational boating safety standards. An uninspected passenger vessel operating as a 6-pack, which can travel up to 100 miles offshore, is currently exempt from having to carry a 406 MHz Emergency Position Indicating Radio Beacon (EPIRB) or a survival craft (e.g., liferaft, life float, or buoyant apparatus). We determined that passenger safety is vastly improved by additional lifesaving equipment such as survival craft and EPIRBs.

The sinking of the M/V COUGAR in the Pacific Ocean off the coast of Oregon in September 1988 is an example of the type of incident that an uninspected passenger vessel can encounter. The COUGAR was a Coast Guard inspected small passenger vessel limited to a voyage of not more than 20 miles from a harbor of safe refuge because the master elected to have onboard a VHF/FM radio instead of a Class A EPIRB. On the day of the sinking, the COUGAR was operating as an uninspected passenger vessel (a 6-pack vessel), so the master could take a fishing charter of six passengers 50 miles offshore. Survivor testimony indicates that the master had trouble with the vessel's bilge system throughout most of the trip, and at the conclusion of the day's fishing, the vessel began to handle sluggishly due to accelerated flooding.

As the vessel began to sink, the master attempted to radio for help. Shore-based, search-and-rescue personnel did not receive the call, and there were no reports of radio contact from any of the vessels in the vicinity. The call for help was not answered. As water began washing over the decks at approximately 5:00 p.m., the passengers and crew abandoned the COUGAR. The only survival craft on the vessel was one buoyant apparatus, which helped people to stay together and afloat while they waited for rescue; however, it provided them no protection from exposure to the cold water.

The COUGAR was reported overdue to the Coast Guard at 9:30 p.m. that evening, after which the search began. There was limited information about where the COUGAR was going to fish that day, so a large search area was required. The search continued all night until a Coast Guard helicopter located the five survivors at 10:48 a.m. the next morning. Four persons, including the master and deckhand, died from hypothermia-related drownings while waiting for rescue.

We reviewed several incidents like this one to determine appropriate requirements for safety equipment on 12-pack vessels. We determined that a liferaft would more than likely have prevented the deaths attributed to exposure to the cold water. An EPIRB would have given the Coast Guard an immediate indication of distress and a signal to ''home in'' on when determining the vessel's location. This would have significantly reduced the hours between the occurrence of the incident and the start of the search-and-rescue operations. Therefore, we propose that 12-pack vessels have survival craft and a 406 MHz EPIRB onboard.

One comment states that the industry could not supply information and responses specific to the questions in the ANPRM since prior to the PVSA, the 12-pack classification did not exist for the industry to assess, and since PVSA, the underlying merchant mariner laws requiring crew rotation every 12 hours,

has made it difficult for vessels to operate as 12-packs under the U.S. flag. The comment further contends that most vessels operating as 12-packs are doing so in foreign waters, under a foreign flag. In the commentator's opinion, there are no U.S.-flag vessels operating as 12-packs on a commercially crewed basis. We disagree. Participation in the 12-pack class is available to U.S.-flag vessels under NVIC 7–94. We determined that there are approximately 100 vessels operating in compliance with the NVIC. It is unlikely that a vessel owner or operator would opt to engage in an activity that holds no economic benefit.

One comment indicates that construction and structural standards for uninspected vessels, regardless of size, have been in place and have been used successfully by industry. The comment discourages imposing construction or structural requirements by regulation for 12-pack vessels and encourages adoption of some industry standard, at the discretion of the builder. At the present time, we do not propose construction standards or structural requirements for uninspected passenger vessels operating as 12-packs.

Two comments request that the Coast Guard provide the 12-pack fleet with relief from crew-rotation requirements currently required by 46 CFR 15.705, which requires vessels greater than 100 gross tons to have a three-watch system when at sea. We concur with these comments in part and have developed regulations to provide 12-pack vessels relief from security watches while a vessel is adequately moored, anchored, or otherwise secured in a harbor of safe refuge. An additional requirement is that a 12-pack vessel operating under these conditions may not exceed 12-hours underway time in any 24-hour period.

Two comments request that this new class of passenger vessel be exempted from load line requirements. We disagree. The purpose of a load line assignment is more than just establishing a ''waterline'' mark on the hull. Although this mark does impose a minimum freeboard that, in turn, establishes reserve buoyancy for the vessel, load line assignment also requires periodic surveys to verify the seaworthiness (*e.g.,* weathertight and watertight integrity)of the vessel. Congress clearly understood this important purpose when it established the applicability provisions of the U.S. load line statutes codified in 46 U.S.C. chapter 51.

Commercial vessels more than 24 meters (79 feet) long that are engaged on international voyages must have an international load line assignment in accordance with the International Convention on Load lines, 1966 (as amended). In addition to its applicability to most commercial vessels, this also applies to yachts on charter and for vessels on voyages to trust territories (such as between the U.S. mainland and Puerto Rico, the U.S. Virgin Islands, Guam, etc.).

U.S. passenger vessels that are more than 100 gross tons, more than 24 meters (79 feet) long, and that operate solely on domestic voyages that cross outside the Boundary Line, are subject to U.S. load line requirements in accordance with 46 U.S.C. chapter 51 and 46 CFR parts 41 to 47 (subchapter E). In the legislative history to 46 U.S.C. chapter 51, Congress directly exempted ''small passenger vessels'' (less than 100 gross tons) from load lines with the reasoning that an equivalent level of safety could be established by regulations and Coast Guard inspection. All other vessels are subject to load line requirements. In the past, some large passenger vessels subject to subchapter H were able to evade load line requirements by an exception in their chartering arrangements. However, these vessels are now properly subject to the load line regulations.

One comment indicates that some vessel owners object to the load line mark itself for aesthetic reasons. The marks must normally be black (on light-colored hulls) or white (on dark-colored hulls), which may visually mar the color scheme of an elegant yacht. While researching the nature of the aesthetic objection, a suggestion was made that a vessel could still obtain a proper load line assignment but not actually have to mark the hull. The Coast Guard does not concur with this suggestion. We consider the hull marking to be a clear visual indication to port authorities that the vessel is subject to load line regulations and should be treated as such. However, we are sympathetic to the aesthetic concerns of the 12-pack industry. We propose to accept alternate colors for the load line marks on 12-pack vessels, provided there is an adequate level of contrast to the hull.

One comment suggests different options for the issuance of special permits. The question presented in the ANPRM was directed to see if persons were interested in participating in special permits, as prescribed by the PVSA. We agree with this comment and have developed a process where vessel operators may apply for special permits when operating their vessels under certain circumstances.

One comment suggests that the licensing requirement for 12-pack operators permitted by the NVIC be continued. This required mariners to hold operator of uninspected passenger vessel (OUPV) licenses to operate vessels of not more than 200 gross tons. The comment further suggested, in great detail, that a new five-tier license structure be instituted since a ''one license fits all'' philosophy is doing disservice to the mariner who operates at the low end of the classification scale. The comment also claims licensed applicants are required to digest extraneous information in order to obtain their licenses. This suggested structure would extend from a low level of OUPV of less than 16 feet to a motorboat of not more than 300 gross tons, limited to near coastal, oceans, Great Lakes or inland, carrying a maximum of 12 passengers. This comment also indicates changes to Table 10.910–2, ''Subjects for deck licenses'' commensurate with the licenses suggested.

The Coast Guard, where possible, is committed to implementing a simpler license structure. We contend that the bare minimum of solid professional knowledge required for the present OUPV license is worth achieving when six—now increased to 12—lives are in an operator's hands. We propose no change to the requirement for an OUPV license on a 6-pack vessel. For 12-pack vessels, we propose that operators hold a master's license of the appropriate tonnage, route, and restrictions for the service in which they will engage. We propose no modifications to Table 10.910–1 in response to this comment.

One comment calls for the issuance of an OUPV license to non-U.S. citizens regardless of the tonnage limitation. The Coast Guard disagrees with the suggestion of allowing unrestricted tonnage licenses for non-U.S. citizens. Title 46 CFR 10.466(f) allows issuance of an OUPV license, limited on its face to undocumented vessels, to a person who is not a citizen of the United States. Only vessels under five-net tons may be undocumented (this roughly equates to a boat of less than 25 feet). Title 46 U.S.C. 12110(d) states that a documented vessel, other than a vessel with only a recreational endorsement, must be placed under the command of a citizen of the United States. When a vessel carries passengers-for-hire, it is no longer ''recreational'' but ''commercial.''

One comment recommends changes to the licensing structure for 12-pack vessels and reevaluation of the existing OUPV-license structure. Another suggests changes to the license examination subjects, license limitations, and vessels on which

service is allowed. These comments are outside the scope of this rulemaking. Therefore, we forwarded them to the appropriate office for consideration.

One comment points out that the Social Security Administration now issues ''tax numbers'' to non-citizens instead of social security numbers and suggests that the Coast Guard accepts these numbers as equivalent to social security numbers. This comment is outside the scope of this rulemaking. Therefore, we forwarded the suggestion to the appropriate division at the Coast Guard's National Maritime Center.

One comment advises the Coast Guard to revamp the uninspected vessel regulations for all affected gross tonnage vessels. This comment is outside the scope of this rulemaking. Therefore, we forwarded it to the appropriate office for consideration.

Four comments involve issues about commercial fishing requirements versus 6-pack vessels. Concerns included the distance from shore that a 6-pack is permitted to operate, the safety equipment on board, safety drills, and crewing. The general request was for the Coast Guard to implement more stringent safety requirements on the 6-pack fleet. These comments are outside the scope of this rulemaking. Therefore, we forwarded them to the appropriate office for consideration. Some of the descriptions supporting these four comments indicate that the writer(s) may have witnessed violations to regulations. The Coast Guard strongly advises anyone witnessing a violation to report it to the local Coast Guard unit or Marine Safety Office without delay. If an incident goes unreported, appropriate action cannot be taken.

Discussion of Proposed Rule

We propose regulations that would change or add definitions, establish a new class of uninspected passenger vessel (12-pack vessel), expand the use of special permits, and establish operational and equipment requirements for PVSA-exempt vessels and 12-pack vessels.

(a) Definitions

We propose incorporating applicable definitions from 46 U.S.C. 2101 into 33 and 46 CFR. In addition, we propose adding certain definitions that will assist in clarification of different operating and equipment requirements that were not specified in the PVSA.

The following definitions are organized alphabetically rather than by section:

Boat. We would revise the definition of ''boat'' in 33 CFR 175.3, 177.03, 179.03, 181.3, and 183.3. The proposed change would revise the definition to include all uninspected passenger vessels subject to the requirements of 46 CFR subchapter C. This revision includes the new 12-pack class wherever the term ''boat'' is used.

Consideration. We propose adding the term ''consideration'' to 46 CFR 24.10 and 70.10 to mean an economic benefit, inducement, right, or profit given in exchange for passage on a vessel.

Oceans. We propose adding the term ''oceans'' to 46 CFR 24.10 to mean the waters of any ocean or the Gulf of Mexico more than 20-nautical miles offshore. This definition would clarify 12-pack requirements where the term ''ocean'' is used.

Passenger. We propose revising the definition of ''passenger'' in 33 CFR 175.3 and 46 CFR 24.10 and 167.107, and adding the definition to 46 CFR 28.10. This will align the use of the term ''passenger'' as defined by the PVSA and eliminate any confusion by deleting all reference to the previously used term ''guest.''

Passenger-for-hire. We propose adding the term ''passenger-for-hire'' to 46 CFR 24.10 to mean a passenger who has provided consideration for passage on a vessel.

Passenger Vessel. We propose revising the definition of the term ''passenger vessel'' in 46 CFR 70.10 and adding it to 199.30. This revision would add to the list of affected vessels a submersible vessel that is carrying at least one passenger-for-hire.

Recreational Vessel. We propose amending the term ''recreational vessel'' in 33 CFR 175.3 to exclude all vessels carrying passengers-for-hire.

Small Passenger Vessel. We propose adding the term ''small passenger vessel'' to 46 CFR 199.30. As used in part 199, a ''small passenger vessel'' would be a vessel that is less than 100 gross tons. Therefore, a 12-pack vessel would not be considered a ''small passenger vessel.''

Submersible vessel. We propose adding the term ''submersible vessel'' to 46 CFR 70.10, 114.400, 175.400, and 199.30 to mean a vessel that operates below the surface of the water.

Survival craft. We propose adding the term ''survival craft'' to 46 CFR 24.10 to mean any lifeboat, rigid liferaft, inflatable liferaft, life float, inflatable buoyant apparatus, buoyant apparatus, or small boat.

Underway. We propose adding the term ''underway'' to 46 CFR 15.301(a) to mean a vessel that is not anchored, made fast to shore, or aground. See the discussion of the 12-pack requirements for further implications to vessel operations due to this definition.

Uninspected passenger vessel. We propose adding the term ''uninspected passenger vessel'' to 46 CFR 24.10 to incorporate both 6-pack vessels and 12-pack vessels.

(b) 12-pack Requirements

The PVSA made a number of changes to the existing laws that required the implementation of immediate guidance to Coast Guard members on enforcement. To remedy this need, the Coast Guard published NVIC 7–94. We propose regulations that closely conform to the provisions for 12-pack vessels found in NVIC 7–94. In addition, we propose requirements for the areas where guidance was deferred until the rulemaking process. The portions of the PVSA that deal with inspection requirements for vessels regulated by 46 CFR subchapter T were incorporated through a previous rulemaking (61 FR 863, January 10, 1996).

We propose revising the application tables in 46 CFR, 2.01–7(a), 24.05–1(a), 30.01–5(d), 70.05–1(a), 90.05–1(a), and 188.05–1(a), that prescribe the appropriate operating subchapter under which a vessel is regulated. The tables were modified to incorporate the new class of uninspected passenger vessel (12-pack vessel), combine passenger vessel descriptions into one column, update the definition of the term ''passenger,'' and other minor editorial changes that add clarity to the tables without changing the technical requirements.

We propose revising 46 CFR 10.466 by requiring that the individual who operates a 12-pack vessel possesses a license appropriate for the tonnage, route, and restrictions for the service in which the vessel will engage. This requirement is different from the OUPV-license requirement under the NVIC. This upgrade to the license requirement will ensure that an operator of a 12-pack vessel possesses competency specific to the size of the vessel and the vessel's route. Since a 12-pack vessel must be a vessel of 100 gross tons or more, this license upgrade is necessary to provide adequate safety.

We are proposing to delete 46 CFR 26.03–5. Title 46 CFR Part 4 adequately deals with accident and casualty reporting and penalties. A single source for information will eliminate the confusion that had previously existed between regulation cites. We are also proposing to delete all references to foreign vessels contained in 46 CFR 169.103(a). This will bring the regulations into line with 46 USC 2101. Under 46 USC 2101 (30) and (36), foreign vessels are not included within

the statutory definition of ''sailing school vessel.''

We propose regulations that establish minimal equipment and operating requirements for 12-pack vessels. Because of the distance from shore that a 12-pack vessel can travel, we would require that all 12-pack vessels carry survival craft for all persons aboard the vessel, regardless of route, while the vessel is carrying at least one passenger-for-hire. We are also requesting additional comments on this requirement to ensure that the final regulation meets the needs of passenger safety while not being onerous to the industry.

We propose that all 12-pack vessels have on board a Category I 406 MHz Satellite EPIRB when operating three miles beyond the territorial sea baseline and beyond three miles from the coastline on the Great Lakes. The 406 MHz EPIRB is a distress-alerting device that provides information that there is a vessel emergency and the position of the vessel in distress. EPIRBs used in conjunction with survival craft greatly enhance the chances for survival if an emergency occurs.

We propose to expand 46 CFR 15.705 to include 12-pack vessels. This section provides relief from multiple-watch systems required by § 15.705 when a vessel is adequately moored, anchored, or otherwise secured in a harbor of safe refuge (reflected through the definition of the term ''underway''). The Coast Guard proposes adding language to § 15.855, which requires cabin watchmen and fire patrolmen on vessels carrying passengers overnight. Uninspected passenger vessels of 100 gross tons or more but less than 300 gross tons operating as 12-packs may substitute the use of various alarms and detectors for security watches. Each alarm must have both an audible and visual indicator located at the normal operating station and, if the normal operating station is not continually manned when not underway, in an alternative location that provides the crew and passengers immediate warning. To comply with this section, the following conditions must be met:

(1) Fire detectors must be located in each space containing machinery or fuel tanks in accordance with 46 CFR 181.400(c).

(2) All grills, broilers, and deep-fat fryers must be fitted with a grease extraction hood in compliance with 46 CFR 181.425.

(3) Heat and/or smoke detectors must be located in each galley, public accommodation space, enclosed passageway, berthing space, and all crew spaces.

(4) High water alarms must be located in each space with a through hull fitting below the deepest load waterline, a machinery space bilge, bilge well, shaft alley bilge, or other space subject to flooding from sea water piping, or other space below the waterline with a non-watertight closure.

(5) The vessel must be navigating underway for no more than 12 hours in any 24-hour period, and the master of the vessel must have chosen to operate with less than a three-watch system in accordance with 46 CFR 15.705.

We do not propose construction standards for 12-pack vessels in this rulemaking. However, if we determine that construction standards for 12-pack vessels are necessary, we may incorporate them at a later date.

(c) Excursion Permits

We may permit an inspected passenger vessel to engage in a temporary excursion operation with a greater number of passengers or an extended route, or both, beyond that permitted by the vessel's Certificate of Inspection when the operation can be done safely. An excursion permit issued for a vessel normally requires the vessel to meet criteria for the additional persons as well as augment its lifesaving capacity and manning for the duration of the excursion. Current requirements for obtaining an excursion permit for an inspected passenger vessel are located in 46 CFR 71.10, 115.205, and 176.204.

The PVSA allows the Coast Guard to develop regulations for special permits for uninspected vessels in certain situations (as is currently done for inspected vessels) under the authority of 46 U.S.C. 2113. We propose implementing this allowance as stated in the PVSA. We propose the criteria for special permits for charitable purposes in 46 CFR 26.03–6 and Marine Events of National Significance in 46 CFR 26.03–8.

Title 46 CFR 26.03–6 would allow the owners or operators of uninspected passenger vessels to donate their vessels to charities for fundraising activities under the following conditions:

- The event must support a bona fide charity or non-profit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986.
- All donations received from the fundraising must go to the named charity.
- An owner or operator may not obtain more than four special permits for an individual vessel in each 12-month period.

If the owner or operator exceeds the number of passengers the vessel is permitted to carry, or if the vessel's activity would otherwise require it to be inspected, the owner or operator may apply for a special permit. Application must be made to the local Officer in Charge, Marine Inspection (OCMI) before the intended voyage. The administrative and inspection criteria contained in 46 CFR 176.204 would apply to the issuance of any special permit. The owner or operator must allow adequate time for processing and approval of the special permit, and the vessel must meet all applicable safety standards.

If the OCMI is satisfied with the level of safety for the excursion, with the number of passengers, the route requested, and if the vessel meets any additional requirements, a special permit may be issued. The special permit will indicate the conditions under which it is issued, the number of persons the vessel may carry, the crew required, any additional lifesaving or safety equipment required, and the route for which the permit is granted. Each special permit is valid for one voyage of a donated vessel used for a charitable event.

Title 46 CFR 26.03–8 would allow special permits to be issued to the owner, operator, or agent of any vessel operating as a registered participant in a Marine Event of National Significance. A Marine Event of National Significance is an event that has substantial political or public interest as well as economic impact within the United States. Examples of past Marine Events of National Significance are those that occurred in conjunction with the 1964 World's Fair, the Bicentennial Celebration in 1976, Liberty Weekend and the rededication of the Statue of Liberty in 1986, and the Christopher Columbus Quincentennial in 1992.

The Commandant, as operational commander of the U.S. Coast Guard, has the authority to designate marine events as nationally significant. Event sponsors must request this determination in writing from the Commandant (G–M)at least one year prior to the event.

Factors to be considered in the Commandant's evaluation may include, but are not limited to, the following:

- The number of port visits scheduled for the event.
- Whether there is a high degree of public interest.
- Whether there is the expressed political interest of a governing body.
- Whether there is an expressed international interest.
- Whether the event will promote maritime education, cultural exchange or international goodwill through the gathering of participating vessels.

• Whether the event is structured in a manner that provides enhanced safety for the registered participants.

If the evaluation results in a decision that a marine event is nationally significant, the owners, operators, or agents of a vessel registered as participants may apply for special permits to carry passengers for the duration of the event. The vessel's master, owner, or agent must apply to the Coast Guard Officer in Charge, Marine Inspection (OCMI), who has jurisdiction over the vessel's first port of call in the United States. The OCMI may issue a special permit if he or she determines that the vessel can safely participate in the event. The permit will state the conditions under which it is issued. These conditions may include—

• The number of passengers the vessel may carry;

• The lifesaving and safety equipment it must carry;

• The route for which the permit is granted;

• The dates for which the permit is valid; and

• Any other condition the OCMI deems necessary to ensure the safety of the vessel's passengers.

We propose revising 46 CFR 2.01–45 ''Excursion Permit'' to include these new provisions for uninspected passenger vessels and Marine Events of National Significance as well as to include reference to subchapters K and T vessels, which may also engage in excursions.

(d) OpSail 2000

On May 15, 2000 a Marine Event of National Significance, OpSail 2000, is scheduled to begin. In order to align our regulations to meet the requirements of this event, the Coast Guard intends to issue a final regulation for 46 CFR 26.03–8 prior to May 15. To meet this schedule, a 30-day comment period is being provided in accordance with section 553 of the Administrative Procedure Act. The public is encouraged to submit timely comments on this section under the procedures described at the beginning of this notice and to be aware that the Coast Guard intends to have an appropriate regulation in place for OpSail 2000. A 90-day comment period is provided for all the remaining provisions of this NPRM.

(e) Exempt Vessels

This part of the rulemaking contains proposed regulations for vessels that became subject to Coast Guard inspection for the first time as the result of the Passenger Vessel Safety Act of 1993. The PVSA contained an allowance for the exemption of certain passenger vessels that—

(1) Are at least 100 gross tons but less than 300 gross tons; or

(2) Are former public vessels of at least 100 gross tons but less than 500 gross tons; and

(3) Applied for an exemption before June 21, 1994 and complied with all exemption requirements by December 21, 1996.

This exemption was limited to existing vessels that were in charter operation before the enactment of the law. The majority of these vessels were constructed of materials, and are of such arrangement, that prohibit them from complying with passenger vessel regulations. Although the actual size and operation of these vessels are similar to small passenger vessels, and in most cases the inspection and manning regulations for small passenger vessels are more appropriate, these vessels have not taken advantage of tonnage reductions to bring their gross tonnages below 100.

The PVSA contains exemption criteria that authorized the Coast Guard to develop specific operating and equipment requirements for vessels that met these criteria. We propose regulations for PVSA-exempt vessels in 46 CFR 70.05–18 and 175.118. Vessel owners and operators must ensure that their vessels meet the requirements of either subchapter T or K, except where the provisions of subchapter H apply. These vessels must also meet any requirements the OCMI may deem applicable to the vessel.

These proposed regulations contain the stability requirements for the vessels. If a vessel does not meet these stability requirements, its operating route will be restricted, provided it has a history of safe operation on these waters. The OCMI may further restrict the vessel's route, if the vessel's service, condition, or other factors affect its seaworthiness and safety.

The proposed requirements state the number of passengers the vessel may carry. In addition, the vessel must be crewed in accordance with 46 CFR subchapter T. Vessel officers must be licensed for the appropriate vessel tonnage. Licensed engineers may be required if the vessel's tonnage is at least 200 gross tons. When carrying 50 or more passengers, additional documented merchant mariners would be required.

We propose requiring the vessel's owner or master to comply with the lifesaving requirements contained in 46 CFR part 180, except that inflatable liferafts are required for primary lifesaving. A rescue boat or suitable rescue arrangement must be provided to the satisfaction of the OCMI.

We propose requiring the vessel's owner or master to comply with the fire protection requirements of 46 CFR part 181, except where vessels must be fitted with portable extinguishers per the requirements of 46 CFR 76.50 and to the satisfaction of the OCMI. Vessels that fail to meet the fire protection and structural fire protection requirements of subchapter T or K must meet equivalent requirements to the satisfaction of the OCMI or the Coast Guard Marine Safety Center.

We propose requirements for at least two means of escape from spaces accessible to passengers or used by the crew on a regular basis, as provided for in 46 CFR 177.500 and 78.47–40.

Vessels meeting these requirements will receive a Certificate of Inspection that contains a PVSA exemption. The PVSA exemption is valid for the service life of the vessel, as long as the vessel remains certificated for passenger service. Currently there are four charter vessels greater than 100 gross tons that meet the exemption criteria and have the PVSA endorsement. If the Certificate of Inspection is surrendered or otherwise becomes invalid, the owner and operator must meet the appropriate inspection regulations to obtain a new Certificate of Inspection without the PVSA exemption.

We propose adding § 70.05–18 to subchapter H Passenger Vessels. This section will contain the applicability to vessels operating under an exemption afforded in the PVSA for passenger vessels over 100 gross tons.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

The Coast Guard proposes regulations that implement safety measures for uninspected passenger vessels under the Passenger Vessel Safety Act of 1993 (PVSA). These regulations will address the confusion regarding bareboat charters, implement a new class of uninspected passenger vessels of at least 100 gross tons, provide for the issuance of special permits to certain

uninspected passenger vessels, develop alternative requirements for a limited fleet of PVSA-exempted vessels, and provide for the issuance of special permits for vessels registered as participants in Marine Events of National Significance.

This rulemaking proposes that vessels of at least 100 gross tons that are currently operating as uninspected passenger vessels and carrying 12 or less passengers have (1) an Emergency Position Indicating Radio Beacon (EPIRB), (2) enough survival craft for all persons on board, and (3) an operator with the appropriate master-level license. These vessels will have to comply with these new requirements to continue operating. The Coast Guard estimates that vessels operating in this type of trade are already in compliance with the proposed survival craft and licensing requirements; however, they are not in compliance with the EPIRB requirement. The use of EPIRBs provides the Coast Guard quicker response time, quicker location of the casualty, and provides the Coast Guard more information prior to the rescue attempt. The 10-year, present value cost of complying with the EPIRB requirement is estimated to be $100,588.

This rulemaking creates a class of vessel (*e.g.,* 12 pack) not previously in existence. If no vessel owner decides to enter this new class of vessel, the cost of this component of the rulemaking would be $0, as it is not a requirement for any existing vessel to enter this class. However, the Coast Guard estimates the owners of 570 vessels will choose to enter this class of vessel. The 10-year, present value cost of this non-mandatory component is $12,642,812. The Coast Guard considers the cost to be non-mandatory because owners are not required to enter this new class of vessel. While we have estimated the projected fleet size for this class of vessel, it is difficult for us to estimate the dollar value of the benefit accruing to the vessel owner. However, the vessel owner will look at his or her individual situation and only enter this new class if he or she perceives an economic benefit from entering.

Additionally, this rule affects uninspected vessels participating in Marine Events of National Significance. The Coast Guard will inspect the vessels not possessing the appropriate certification and issue special permits that allow these vessels to carry passengers during the event. Vessel owners will have an information request burden, as they must apply for permits. The 10-year, present value cost of this information collection request is $2,064. As participation in these events is not a requirement of the rulemaking, these costs are considered to be non-mandatory. There will be additional cost to the government due to inspections and travel. The 10-year present value of the additional cost to the government is estimated to be $75,111. The intent of this requirement is to provide a safer environment at Marine Events of National Significance. While there have been no notable past problems at such events, the Coast Guard is acting proactively to reduce the risk of marine casualties.

In summary, this rulemaking creates a new class of vessel and allows vessels not possessing the appropriate certification to participate in a Marine Event of National Significance if they pass a Coast Guard inspection. These are not requirements, so the costs associated with these changes are not counted in the total cost of the rulemaking. This rulemaking also requires uninspected passenger vessels greater than 100 gross tons and carrying 12 or less passengers to have (1) an Emergency Position Indicating Radio Beacon (EPIRB), (2) enough survival craft for all persons on board, and (3) an operator with the appropriate master-level license. Thus, the total 10-year present value cost of the requirements contained in this proposed rulemaking equals $100,588.

Small Entities

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

The only type of small entity that will be affected by this rulemaking is small business. While the size standards for the relevant Standard Industrial Classification (SIC) codes [1] considers enterprises with 500 or less employees to be small businesses, making practically all owners in the 12-pack industry small entities, the only mandatory cost in this rulemaking is the cost of an EPIRB. We do not expect that owners of vessels of this size and type, whose cost ranges from about $100 thousand to about $5 million, will consider an additional cost of $1,000 for an EPIRB to be significant. In addition, since the useful life of an EPIRB is indefinite, the annualized cost for this item over the 10-year period of analysis is $110 [2], which is even more likely to be insignificant. The Coast Guard is also allowing a 6-month phase-in period for vessels to comply with the requirement to carry an EPIRB on board.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Michael A. Jendrossek, Office of Operating and Environmental Standards (G–MSO–2), telephone 202–267–1055.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman annually evaluates these actions and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, dial 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who

[1] The relevant industries are Deep Sea Transportation of Passengers (4481) and Water Transportation of Passengers, N.E.C. (4489).

[2] Current, or 2000 dollars.

must collect the information, and an estimate of the total annual burden follows. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Vessel Inspection Related Forms and Posting Requirements Under Title 46 U.S. Code

Summary of The Collection of Information: This collection of information will be included under the current approved Office of Management and Budget (OMB) collection numbered 2115–0133 entitled Vessel Inspection Related Forms and Posting Requirements Under Title 46 U.S. Code.

Need for Information: The owners, operators, or agents of uninspected vessels participating in a Marine Event of National Significance must submit an application for excursion permits.

Proposed Use of The Information: Applications will be used to initiate the inspection process to determine whether these vessels are properly equipped to be granted the excursion permit.

Description of Respondents: The respondents are owners or operators of uninspected vessels participating in a Marine Event of National Significance.

Number of Respondents: The Coast Guard estimates that owners of approximately 175 vessels will require and apply for permits at Marine Events of National Significance in 2000.

Frequency of Response: The permits are only valid for the duration of the event. We estimate that the vessels that require these permits will only attend one Marine Event of National Significance in 2000. We further estimate that these events occur approximately once every 10 years.

Burden of Response: The time burden of this response request in 2000 is 43 hours for industry and 1080 hours for the government. The total cost of these burdens is $2,064 for industry and $75,111 for the government.

Estimate of Total Annual Burden: Since we estimate that Marine Events of National Significance will occur approximately every 10 years, the total annual burden is the total burden reported above divided by 10. The annual time burden for industry is four hours and the annual time burden for government is 108 hours. The annual cost of these respective burdens is $206 for industry and $7,511 for the government.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under DATES.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism Summary Impact Statement

We have analyzed this proposed rule under Executive Order 13132, Federalism.

It is well settled that States are precluded from regulating in the categories of vessel design, construction, and equipment—categories that are reserved for regulation by the Coast Guard under 46 U.S.C. 3306 and 3703(a). See *Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151 (1978), which clearly evidences Congressional intent to preempt State law, because the exercise of State authority would conflict with the exercise of Federal authority under Federal statute. Also see *International Association of Independent Tank Vessel Owners (Intertanko)* v. *Locke,* 148 F.3d 1053 (9th Cir. 1998). Further, it is the position of the United States that all of the categories covered in 46 U.S.C. 3306 and 3703(a), 7101, and 8101 (e.g., design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the field foreclosed from State regulation. See the Brief for the United States at 26, *United States* v. *Locke; Intertanko* v. *Locke* (Nos. 98–1701 and 98–1706) (cert. granted 120 S. Ct. 133), available in LEXIS, Genfed Library, Briefs file. This rule falls into the above mentioned categories, thereby precluding state regulation. For this reason, consultation under section 6 of the Executive Order would not be meaningful and, therefore, is unnecessary.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not 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 proposed 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 proposed 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

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(c), (d), and (e) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This proposed rule will not result in any significant cumulative impact on the human environment; any substantial controversy or substantial change to existing environmental conditions; any impact, which is more than minimal, on properties protected under 4(f) of the DOT Act, as superseded by Public Law 97–449 and Section 106 of the National Historic Preservation Act; or any inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 175

Marine safety.

33 CFR Part 177

Marine safety.

33 CFR Part 179

Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 183

Marine safety.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 24

Marine safety.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

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

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 199

Lifesaving appliances and arrangements Marine safety, and Passenger vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 175, 177, 179, 181, and 183 as well as 46 CFR Parts 2, 10, 15, 24, 25, 26, 28, 30, 70, 90, 114, 169, 175, 188, and 199 as follows:

33 CFR Chapter I

PART 175—EQUIPMENT REQUIREMENTS

1. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. In § 175.3, revise the definition of the following terms, in alphabetical order, to read as follows:

§ 175.3 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operating as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

* * * * *

Passenger means an individual carried on a vessel except—

(1) The owner or an individual representative of the owner or, in the case of a vessel chartered without crew, an individual charterer, or an individual representative of the charterer;

(2) The master or operator of a recreational vessel; or

(3) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services.

* * * * *

Recreational vessel means any vessel being manufactured or operated primarily for pleasure, or leased, rented, or chartered to another for the latter's pleasure. It does not include a vessel engaged in the carriage of passengers-for-hire as defined in 46 CFR chapter I, subchapter C or in other subchapters of this title.

* * * * *

3. Revise § 175.110(a) to read as follows:

§ 175.110 Visual distress signals required.

(a) No person may use a boat 16 feet or more in length, or any boat operating as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C, unless visual distress signals selected from the list in § 175.130 or the alternatives in § 175.135, in the number required are on board. Devices suitable for day use and devices suitable for night use, or devices suitable for both day and night use, must be carried.

* * * * *

PART 177—CORRECTION OF ESPECIALLY HAZARDOUS CONDITIONS

4. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 4302, 4311; 49 CFR 1.45 and 1.46.

5. Revise § 177.03(b) to read as follows:

§ 177.03 Definitions.

* * * * *

(b) *Boat* means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR Chapter I, subchapter C.

* * * * *

PART 179—DEFECT NOTIFICATION

6. The authority citation for part 179 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 4302, 4307, 4310, and 4311; 49 CFR 1.46.

7. In § 179.03, revise the definition of the term ''Boat'' to read as follows:

§ 179.03 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the

requirements of 46 CFR chapter I, subchapter C.

* * * * *

PART 181—MANUFACTURER REQUIREMENTS

8. The authority citation for part 181 continues to read as follows:

Authority: 46 U.S.C. 4302 and 4310; 49 CFR 1.46.

9. In § 181.3, revise the definition of the term ''Boat'' to read as follows:

§ 181.3 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

* * * * *

PART 183—BOATS AND ASSOCIATED EQUIPMENT

10. The authority citation for part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

11. In § 183.3, revise the definition of the term ''Boat'' to read as follows:

§ 183.3 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

* * * * *

46 CFR Chapter I

PART 2—VESSEL INSPECTIONS

12. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3103, 3205, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. Note prec.1).

13. In § 2.01–7, redesignate table 2.01–7(A) as table 2.01–7(A) and revise it to read as follows:

§ 2.01–7 Classes of vessels (including motorboats) examined or inspected and certificated.

(a) * * *

BILLING CODE 4910–15–U

Table 2.01-7(a)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceano-graphic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1)	Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, 6 And 7.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 2.01-7(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1,11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1,11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 2.01-7(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceano-graphic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, 6 and 7.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or linmology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

14. Revise § 2.01–45 to read as follows:

§ 2.01–45 Excursion Permit.

(a) Under 46 U.S.C. 2113, the Coast Guard may issue a permit to the owner, operator, or agent of a passenger vessel, allowing the vessel to engage in excursions that carry additional numbers of passengers, extend an existing route, or both. Details concerning the application process for excursion permits for inspected passenger vessels are contained in §§ 71.10, 115.204, or 176.204 of this chapter. Details concerning the application process for special permits for uninspected passenger vessels are contained in § 26.03–6 of this chapter.

(b) For Marine Events of National Significance, as determined by the Commandant, U.S. Coast Guard, a vessel may be permitted to engage in these events while carrying passengers-for-hire for the duration of the event. Event sponsors must request this determination in writing from the Commandant (G–M) at least one year prior to the event. Details concerning the application process for special permits for Marine Events of National Significance are contained in § 26.03–8 of this chapter.

(c) The application for an excursion permit is made by the master, owner, or agent of the vessel to the Officer in Charge, Marine Inspection, on Coast Guard Form CG–950, Application for Excursion Permit. If, after inspection, permission is granted, it is given on Coast Guard form CG–949, Permission to Carry Excursion Party. The permit describes the vessel, the route over which and the period during which the excursions may be made, and the safety equipment required for the additional persons indicated.

PART 10—LICENSING OF MARITIME PERSONNEL

15. The authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701, 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

16. Revise § 10.466(a) to read as follows:

§ 10.466 Licenses for operators of uninspected passenger vessels.

(a) This section applies to all applicants for a license to operate an uninspected passenger vessel, equipped with propulsion machinery of any type.

(1) Individuals operating an uninspected passenger vessel less than 100 gross tons must meet the qualifications for the operator of uninspected passenger vessel license listed in this section.

(2) Individuals operating an uninspected passenger vessel of at least 100 gross tons must meet the qualifications for the master's license appropriate for the vessel tonnage, route, and restrictions for the service in which they will engage.

(3) Individuals operating an uninspected vessel of at least 200 gross tons must meet the qualifications for the master or mate license appropriate for the tonnage, route, and restrictions for the service in which they will engage.

* * * * *

PART 15—MANNING REQUIREMENTS

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

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; 49 CFR 1.45 and 1.46.

18. In § 15.301(a), add, in alphabetical order, the term ''Underway'' to the list of definitions, to read as follows:

§ 15.301 Definitions of terms used in this part.

(a) * * *

Underway means that a vessel is not at anchor, made fast to the shore, or aground.

* * * * *

19. Revise § 15.605 to read as follows:

§ 15.605 Licensed operators for uninspected passenger vessels.

Each self-propelled, uninspected passenger vessel must be under the direction and control of an individual licensed by the Coast Guard.

20. Add § 15.705(f) to read as follows:

§ 15.705 Watches.

* * * * *

(f) Properly manned uninspected passenger vessels of at least 100 gross tons—

(1) Which are underway for no more than 12 hours in any 24-hour period, and which are adequately moored, anchored, or otherwise secured in a harbor of safe refuge for the remainder of that 24-hour period may operate with one navigational watch;

(2) Which are underway greater than 12 hours in any 24-hour period must provide a minimum of a two-watch system;

(3) In no case may the crew of any watch work more than 12 hours in any 24-hour period, except in an emergency.

21. Add § 15.805(a)(6) to read as follows:

§ 15.805 Master.

(a) * * *

(6) Every uninspected passenger vessel of at least 100 gross tons.

* * * * *

22. Add § 15.855(c) to read as follows:

§ 15.855 Cabin watchmen and fire patrolmen.

* * * * *

(c) For the watchmen described in paragraph (a), the owner or operator of an uninspected passenger vessel of at least 100 gross tons but less than 300 gross tons may substitute the use of fire detectors, heat detectors, smoke detectors, and high-water alarms with audible- and visual-warning indicators, in addition to other required safety alarms, only when each of the following conditions are met:

(1) Fire detectors are located in each space containing machinery or fuel tanks in accordance with § 181.400(c) of this chapter.

(2) All grills, broilers, and deep-fat fryers are fitted with a grease extraction hood in compliance with § 181.425 of this chapter.

(3) Heat and/or smoke detectors are located in each galley, public accommodation space, enclosed passageway, berthing space, and all crew spaces.

(4) High water alarms are located in each space with a through hull fitting below the deepest load waterline, a machinery space bilge, bilge well, shaft alley bilge, or other space subject to flooding from sea water piping within the space, and a space below the waterline with non-watertight closure such as a space with a non-watertight hatch on the main deck.

(5) Each alarm has an audible- and visual-alarm indicator located at the normal operating station and, if the normal operating position is not continually manned when not navigating underway, in an alternate location that must provide the crew, and may at all times provide the passengers, immediate warning of a hazardous condition.

(6) The vessel is underway for no more than 12 hours in any 24-hour period, and the master of the vessel has chosen to operate with less than a three-watch system in accordance with § 15.705.

23. Revise § 15.905 to read as follows:

§ 15.905 Uninspected passenger vessels.

(a) An individual holding a license as master or pilot of an inspected, self-propelled vessel is authorized to serve as operator of an uninspected passenger vessel, within any restrictions on the individual's license.

(b) An individual holding a license as mate of inspected, self-propelled vessels, other than Great Lakes, inland, or river vessels of not more than 200 gross tons, is authorized to serve as operator of uninspected passenger vessels within any restrictions on the individual's license.

PART 24—GENERAL PROVISIONS

24. The authority citation for part 24 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

25. In § 24.05–1, revise table 24.05–1(a) to read as follows:

§ 24.05–1 Vessels subject to the requirements of this subchapter.

(a)* * *

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Table 30.01-5(d)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1)	Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply t--: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 24.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	ii) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

24.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i.) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or Part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or linmology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

26. Revise subpart 24.10 to read as follows:

Subpart 24.10—Definition of Terms Used in This Subchapter

Sec.
24.10–1 Definitions.

§ 24.10–1 Definitions.

Approved means approved by the Commandant, unless otherwise stated.

Barge means a non-self-propelled vessel.

Carrying freight for hire means the carriage of any goods, wares, or merchandise, or any other freight for a consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person interested in the vessel.

Coast Guard District Commander means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within his or her district, which includes the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

Commandant means the Commandant of the United States Coast Guard.

Consideration means an economic benefit, inducement, right, or profit, including pecuniary payment accruing to an individual, person, or entity but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

Headquarters means the Office of the Commandant, United States Coast Guard, Washington, DC.

International voyage means a voyage from a country to which the present convention applies to a port outside such country, or conversely.

Marine inspector or *inspecto*r means any person from the civilian or military branch of the Coast Guard assigned under the direction of an Officer in Charge, Marine Inspection, or any other person designated to perform duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

Motor vessel means any vessel more than 65 feet in length, which is propelled by machinery other than steam.

Motorboat means any vessel indicated in column five of Table 24.05–1(a) in § 24.05–1, 65 feet in length or less, which is equipped with propulsion machinery (including steam). The length must be measured from end-to-end over the deck, excluding sheer. This term includes a boat equipped with a detachable motor. For the purpose of this subchapter, motorboats are included under the term *vessel,* unless specifically noted otherwise.

(1) The various length categories of motorboats are as follows:

(i) Any motorboat less than 16 feet in length.

(ii) Any motorboat 16 feet or over and less than 26 feet in length.

(iii) Any motorboat 26 feet or over and less than 40 feet in length.

(iv) Any motorboat 40 feet or over and not more than 65 feet in length.

(2) The expression ''length must be measured from end-to-end over the deck excluding sheer'' means a straight-line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not to be included in the measurement. Length must be stated in feet and inches.

Oceans means a route that goes beyond 20-nautical miles offshore on any of the following waters:

(1) Any ocean.

(2) The Gulf of Mexico.

(3) The Caribbean Sea.

(4) The Bering Sea.

(5) The Gulf of Alaska.

(6) Such other similar waters as may be designated by a Coast Guard District Commander.

Officer in Charge, Marine Inspection or *OCMI* means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of an inspection zone for performance of duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

Passenger means an individual carried on a vessel, except—

(1) The owner or an individual representative of the owner, or in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(2) The master; or

(3) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services.

Passenger-for-hire means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

Survival craft means a lifeboat, rigid liferaft, inflatable liferaft, life float, inflatable buoyant apparatus, buoyant apparatus, or small boat.

Vessel, as used in this subpart includes all vessels indicated in column five of Table 24.05–1(a) in § 24.05–1, unless otherwise noted in this subpart.

Uninspected passenger vessel means an uninspected vessel—

(1) Of at least 100 gross tons;

(i) Carrying not more than 12 passengers, including at least one passenger-for-hire; or

(ii) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; and

(2) Of less than 100 gross tons;

(ii) Carrying not more than six passengers, including at least one passenger-for-hire; or (2) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than six passengers.

PART 25—REQUIREMENTS

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

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

28. Revise § 25.25–5(d) to read as follows:

§ 25.25–5 Life Preservers and other lifesaving equipment required.

* * * * *

(d) In addition to the equipment required by paragraph (b) and (c) of this section, each vessel 26 feet in length or longer must have at least one approved ring life buoy, and each uninspected passenger vessel of at least 100 gross tons must have at least three ring life buoys. Ring life buoys must be constructed in accordance with subpart 160.050 of part 160 of this chapter. The exception is a ring life buoy that was approved prior to May 9, 1979, under former subpart 160.009 of part 160 this chapter (see 46 CFR Chapter I, revised as of October 1, 1979), which may be used as long as it is in good and serviceable condition.

* * * * *

29. Add § 25.25–17 to read as follows:

§ 25.25–17 Survival craft requirements for uninspected passenger vessels of at least 100 gross tons.

(a) Each uninspected passenger vessel of at least 100 gross tons must have adequate survival craft with enough capacity for all persons aboard, and must meet one of the following requirements:

(1) An inflatable liferaft must be approved under 46 CFR part 160, subpart 160.151 and be equipped with an applicable equipment pack or be approved by another standard specified by the Commandant.

(2) A life float must be approved under 46 CFR part 160, subpart 160.027 or other standard specified by the Commandant.

(3) An inflatable buoyant apparatus must be approved under 46 CFR part 160, subpart 160.010 or other standard specified by the Commandant.

(4) A buoyant apparatus must be approved under 46 CFR part 160, subpart 160.010 or other standard specified by the Commandant.

(b) If the vessel carries a small boat or boats, the capacity of the small boat or boat(s) may be counted toward the survival craft capacity required by this part. Such small boat or boat(s) must meet the requirements for safe loading and floatation in 33 CFR part 183.

30. Add § 25.25–19 to read as follows:

§ 25.25–19 Visual distress signals.

Each uninspected passenger vessel must meet the visual distress signal requirements of 33 CFR part 175 applicable to the vessel.

31. Revise § 25.26–10 to read as follows:

§ 25.26–10 EPIRB requirements for uninspected passenger vessels.

(a) Uninspected passenger vessels less than 100 gross tons are not required to carry an EPIRB.

(b) The owner, operator, or master of an uninspected passenger vessel of at least 100 gross tons must ensure that the vessel does not operate beyond three miles from shore as measured from the territorial sea baseline seaward or more than three miles from the coastline of the Great Lakes, unless it has on board a float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will floatfree if the vessel sinks.

32. In § 25.30–20, redesignate paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and add a new paragraph (b) to read as follows:

§ 25.30–20 Fire extinguishing equipment required.

* * * * *

(b) *Uninspected passenger vessels of at least 100 gross tons.* All uninspected passenger vessels of at least 100 gross tons must carry on board hand portable and semi-portable fire extinguishers in compliance with Table 76.50–10(A) in § 76.50–10 of this chapter.

* * * * *

PART 26—OPERATIONS

33. The authority citation for part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

34. Revise § 26.03–1(a) introductory text to read as follows:

§ 26.03–1 Safety orientation.

(a) Before getting underway on any uninspected passenger vessel, the operator or master must ensure that suitable public announcements, instructive placards, or both, are provided in a manner that affords all passengers the opportunity to become acquainted with:

* * * * *

35. Revise § 26.03–2(a) to read as follows:

§ 26.03–2 Emergency instructions.

(a) The operator or master of each uninspected passenger vessel must ensure that an emergency check-off list is posted in a prominent and accessible place to notify the passengers and remind the crew of precautionary measures that may be necessary if an emergency situation occurs.

* * * * *

36. Add § 26.03–4 to read as follows:

§ 26.03–4 Charts and nautical publications.

(a) Each uninspected passenger vessel of at least 100 gross tons must carry adequate, up-to-date, and appropriate for their intended voyage—

(1) Charts of appropriate scale to make safe navigation possible;

(2) U.S. Coast Pilot or similar publication;

(3) Coast Guard Light List;

(4) Tide tables; and

(5) Current tables, or a river current publication issued by the U.S. Army Corps of Engineers, or a river authority.

(b) As an alternative, you may substitute extracts or copies from the publications in paragraph (a). This information must be applicable to the area transited.

37. Add § 26.03–6 to read as follows:

§ 26.03–6 Special permit.

(a) If the owner, operator, or agent donates the use of an uninspected passenger vessel to a charity for fundraising activities, and the vessel's activity would subject it to Coast Guard inspection, the OCMI may issue a special permit to the owner, operator, or agent for this purpose if, in the opinion of the OCMI, the vessel can be safely operated. Each excursion permit is valid for only one voyage of a donated vessel, which is used for a charitable purpose. Applications are considered and approved on a case-by-case basis.

(b) The criteria of § 176.204 of this chapter will apply to the issuance of a special permit. In addition, the owner, operator, or agent must meet each of these conditions—

(1) Any charity using a donated vessel must be a bona fide charity or a non-profit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986;

(2) All donations received from the fundraising must go to the named charity;

(3) The owner, operator, or agent may obtain a special permit for an individual vessel not more than four times in a 12-month period; and

(4) The owner, operator, or agent must apply to the local OCMI for a special permit prior to the intended voyage, allowing adequate time for processing and approval of the permit.

(c) Nothing in this part may be construed as limiting the OCMI from making such tests and inspections, both afloat and in dry-dock, that are reasonable and practicable to be assured of the vessel's seaworthiness and safety.

§ 26.03–5 [Removed]

38. Remove § 26.03–5.

39. Add § 26.03–8 to read as follows:

§ 26.03–8 Marine event of national significance special permits.

(a) For Marine Events of National Significance, as determined by the Commandant, U.S. Coast Guard, a vessel may be permitted to engage in these events while carrying passengers-for-hire for the duration of the event. Event sponsors must request this determination in writing from the Commandant (G-M) at least one year prior to the event.

(b) The owner, operator, or agent of a vessel that has registered as a participant in Marine Events of National Significance, may apply for a special permit to carry passengers for the duration of the event. The master owner, or agent of the vessel must apply to a Coast Guard OCMI who has jurisdiction over the vessel's first United States port of call. The OCMI may issue a Form CG–949 ''Permit to Carry Excursion Party'' if in the opinion of the OCMI the operation can be undertaken safely. The OCMI may require an inspection prior to issuance of a special permit.

(c) The permit will state the conditions under which it is issued. These conditions must include the number of passengers the vessel may carry, the crew required, the number

and type of lifesaving and safety equipment required, the route, and operating details for which the permit is issued, and the dates for which the permit will be valid.

(d) The permit must be displayed in a location visible to passengers.

40. Revise § 26.03–10 to read as follows:

§ 26.03–10 Voyage plans for uninspected passenger vessels of at least 100 gross tons.

(a) The master must prepare a voyage plan that includes a crew and passenger list before taking an uninspected passenger vessel of at least 100 gross tons on a Great Lake, an ocean, or an international voyage.

(b) Before departure, the master must communicate the voyage plan ashore, either verbally or in writing. The voyage plan must go to either the vessel's normal berthing location or a representative of the owner or managing operator of the vessel. The master, owner, or operator of the vessel must make the voyage plan available to the Coast Guard upon request.

41. Add § 26.03–12 to read as follows:

§ 26.03–12 Signaling light.

All vessels of over 150 gross tons, when on an international voyage, shall be equipped with an efficient daylight signaling lamp in accordance with the requirements of subchapter J (Electrical Engineering) of this chapter.

Subpart 26.20—Exhibition of Coast Guard License.

42–43. In subpart 26.20, revise the subpart heading to read as set forth above.

44. Revise § 26.20–1 to read as follows:

§ 26.20–1 Must be available.

If a person operates a vessel that carries one or more passengers-for-hire, he or she is required to have a valid Coast Guard license suitable for the vessel's route and service. He or she must have the license in his or her possession and must produce it immediately upon the request of a Coast Guard boarding officer.

PART 30—GENERAL PROVISIONS

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

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

46. In § 30.01–5(d), redesignate table 30.01–5(D) as table 30.01–5(d) and revise it to read as follows:

§ 30.01–5 Application of regulations—TB/ALL.

* * * * *

(d) * * *

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Table 30.01-5(d)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1)	Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply t--: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 30.01-5(d) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1,11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1,11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 30.01-5(d) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	**Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]**	**Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]**	**Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]**	**Subchapter U--Oceano-graphic Vessels.[2, 3, 6, 7, and 9]**	**Subchapter O--Certain Bulk and Dangerous Cargoes.[10]**
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or linmology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

PART 70—GENERAL PROVISIONS

47. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

48. In § 70.05–1, redesignate table 70.05–1(A) as table 70.05–1(a) and revise it to read as follows:

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Table 70.05-1(a)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1)	Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 70.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] 3) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] 4) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 70.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or.combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

49. Add § 70.05–18 to read as follows:

§ 70.05–18 Applicability to Vessels Operating Under an Exemption Afforded in the Passenger Vessel Safety Act of 1993 (PVSA).

(a) The Passenger Vessel Safety Act of 1993 (PVSA) contained an allowance for the exemption of certain passenger vessels that are—

(1) At least 100 gross tons but less than 300 gross tons; or (2) Former public vessels of at least 100 gross tons but less than 500 gross tons.

(b) The owner or operator of a vessel must have applied for an exemption under the PVSA by June 21, 1994, and then brought the vessel into compliance with the interim guidance in Navigation and Inspection Circular (NVIC) 7–94 not later than December 21, 1996. The PVSA exemption is valid for the service life of the vessel, as long as the vessel remains certified for passenger service. If the Certificate of Inspection (COI) is surrendered or otherwise becomes invalid (not including a term while the vessel is out of service but undergoing an inspection for recertification), the owner or operator must meet the appropriate inspection regulations to obtain a new COI without the PVSA exemption. See 46 CFR 175.118 for information about applicable regulations for vessels that operate under the PVSA exemption.

50. Revise subpart 70.10 to read as follows:

Subpart 70.10—Definition of Terms Used in This Subchapter.

Sec.
70.10–1 Definitions.

§ 70.10–1 Definitions.

Approved means approved by the Commandant, unless otherwise stated.

Barge means any non-self-propelled vessel.

Carrying freight for hire means the carriage of any goods, wares, or merchandise, or any other freight for a consideration whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person interested in the vessel.

Classed vessel means any vessel classed by the American Bureau of Shipping or other recognized classification society.

Coast Guard District Commander means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within his or her district, which include the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

Coastwise is a designation of service that includes all vessels normally navigating the waters of any ocean or the Gulf of Mexico 20-nautical miles or less offshore.

Commandant means the Commandant of the United States Coast Guard.

Consideration means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

Ferry is a designation that includes those vessels, in other than ocean or coastwise service, having provisions only for deck passengers and/or vehicles, operating on a short run, on a frequent schedule between two points over the most direct water route, and offering a public service of a type normally attributed to a bridge or tunnel.

Great Lakes is a designation of service that includes all vessels navigating the Great Lakes.

Headquarters means the Office of the Commandant, United States Coast Guard, Washington, DC 20593.

Lakes, bays, and sounds is a designation of service that includes all vessels navigating the waters of the lakes, bays, or sounds other than the waters of the Great Lakes.

Marine inspector or *inspector* means any person from the civilian or military branch of the Coast Guard assigned under the direction of an Officer in Charge, Marine Inspection, or any other person designated to perform duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

Motor vessel means any vessel more than 65 feet in length, which is propelled by machinery other than steam.

Ocean is a designation of service that includes all vessels navigating the waters of any ocean or the Gulf of Mexico more than 20-nautical miles offshore.

Officer in Charge, Marine Inspection means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statues.

Passenger means—

(1) On an international voyage, every person other than—

(i) The master and the members of the crew or other persons employed or engaged in any capacity onboard a vessel on the business of that vessel; and

(ii) A child under the age of one.

(2) On other than an international voyage, an individual carried on the vessel, except—

(i) The owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(ii) The master; or

(iii) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services.

Passenger-for-hire means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

Passenger vessel means

(1) On an international voyage, a vessel of at least 100 tons gross tonnage carrying more than 12 passengers; and

(2) On other than an international voyage, a vessel of at least 100 tons gross tonnage—

(i) Carrying more than 12 passengers, including at least one passenger-for-hire;

(ii) That is chartered and carrying more than 12 passengers; or

(iii) That is a submersible vessel and carrying at least one passenger-for-hire.

Pilot boarding equipment means a pilot ladder, accommodation ladder, pilot hoist, or combination of them, as required by this subchapter.

Point of access means the place on the deck of a vessel where a person steps onto or off pilot boarding equipment.

Recognized classification society means the American Bureau of Shipping or other classification society as recognized by the Commandant.

Rivers is a designation of service that includes all vessels whose navigation is restricted to rivers and/or canals, and to such other waters as may be designated by the Coast Guard District Commander.

Sailing vessel means a vessel with no mechanical means of propulsion, all propulsive power being provided by sails.

Short international voyage means an international voyage in the course of which a vessel is not more than 200 miles from a port or place in which the

passengers and crew could be placed in safety. Neither the distance between the last port of call in the country in which the voyage begins and the final port of destination, nor the return voyage, may exceed 600 miles. The final port of destination is the last port of call in the scheduled voyage at which the vessel commences its return voyage to the country in which the voyage began.

Specially suitable for vehicles is a designation used for a space that is designed for the carriage of automobiles or other self-propelled vehicles with batteries connected and fuel tanks containing gasoline on vessels on ocean or unlimited coastwise voyages. Requirements for the design and protection of spaces specially suitable for vehicles appear in subparts 72.15, 76.15, 77.05, 78.45, 78.47, and 78.83 of parts 72, 76, 77 and 78 of this subchapter. In addition, preparation of automobiles prior to carriage, with the exception of disconnecting battery cables, must be in accordance with the applicable provision of 49 CFR 176.905.

Submersible vessel means a vessel that is capable of operating below the surface of the water.

Vessel, as used in this subchapter, shall be considered to include all vessels indicated in column three of table 70.05–1(a) in § 70.05–1, which are greater than 65 feet in length (measured from end-to-end over the deck, excluding sheer) and carrying more than six passengers-for-hire, unless otherwise noted in this subpart.

PART 90—GENERAL PROVISIONS

51. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

52. In § 90.05–1(a), redesignate table 90.05–1(A) as table 90.05–1(a) and revise it to read as follows:

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Table 90.05-1(a)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceano-graphic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1)	Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 90.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 90.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or Part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or linmology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

PART 114—GENERAL PROVISIONS

53. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 114.900 also issued under 44 U.S.C. 3507.

54. In § 114.400(b), add, in alphabetical order, the term ''Submersible vessel'' to the list of definitions, to read as follows:

§ 114.400 Definition of terms used in this subchapter.

* * * * *

Submersible vessel means a vessel that is capable of operating below the surface of the water.

* * * * *

PART 169—SAILING SCHOOL VESSELS

55. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

56. Revise § 169.103(a) and (b) to read as follows:

§ 169.103 Applicability.

(a) This subchapter applies to each domestic vessel operating as a sailing school vessel.

(b) This subchapter does not apply to—

(1) Any vessel operating exclusively on inland waters which are not navigable waters of the United States;

(2) Any vessel while laid up, dismantled, and out of service;

(3) Any vessel with title vested in the United States and which is used for public purposes except vessels of the U.S. Maritime Administration;

(4) Any vessel carrying one or more passengers;

(5) Any vessel operating under the authority of a current valid certificate of inspection issued in accordance with the requirements of 46 CFR chapter I, subchapter H or T, 46 CFR parts 70 through 78 and parts 175 through 187, respectively; or

(6) Any foreign vessel.

* * * * *

57. In § 169.107, remove paragraph (f) and redesignate paragraphs (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), and (y) as paragraphs (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x), respectively; and revise the newly redesignated § 169.107(n) to read as follows:

§ 169.107 Definitions.

* * * * *

(n) *Passenger* on a sailing school vessel, means an individual carried on the vessel except—

(1) The owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(2) The master;

(3) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services;

(4) An employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

(5) An employee of the demise charterer of the vessel engaged in the business of the demise charterer; or

(6) A sailing school instructor or sailing school student.

* * * * *

PART 175—GENERAL PROVISIONS

58. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under authority of 44 U.S.C. 3507.

59. Add § 175.118 to read as follows:

§ 175.118 Vessels operating under an exemption afforded in the Passenger Vessel Safety Act of 1993 (PVSA).

(a) The Passenger Vessel Safety Act of 1993 (PVSA) contained an allowance for the exemption of certain passenger vessels that are—

(1) At least 100 gross tons but less than 300 gross tons; or

(2) Former public vessels of at least 100 gross tons but less than 500 gross tons.

(b) The owner or operator of a vessel must have applied for an exemption under PVSA by June 21, 1994, and then brought the vessel into compliance with the interim guidance in Navigation and Inspection Circular (NVIC) 7–94 not later than December 21, 1996. The PVSA exemption is valid for the service life of the vessel, as long as the vessel remains certified for passenger service. If the Certificate of Inspection (COI) is surrendered or otherwise becomes invalid (not including a term while the vessel is out of service but undergoing an inspection for recertification), the owner or operator must meet the appropriate inspection regulations to obtain a new COI without the PVSA exemption.

(c) Except where the provisions of 46 CFR chapter I, subchapter H apply, the owner or operator must ensure that the vessel meets the requirements of 46 CFR chapter I, subchapter T, meets any requirements the OCMI deems applicable, and meets any specific additions or exceptions as follows:

(1) If a vessel does not meet the intact stability requirements of 46 CFR chapter I, subchapter S, the vessel's route(s) will be limited to an area within 20-nautical miles from a harbor of safe refuge, provided the vessel has a history of safe operation on those waters. The OCMI may further restrict the vessel's routes if the vessel's service history, condition, or other factors affect its seaworthiness or safety.

(2) The vessel may not carry more than 150 passengers, and not more than 49 passengers in overnight accommodations.

(3) The owner or operator must crew the vessel under the requirements in 46 CFR chapter I, subchapter T. All officers must be licensed for the appropriate vessel tonnage. The OCMI may require a licensed engineer for those vessels of at least 200 gross tons. Vessels carrying more than 50 passengers must have an additional deckhand, and all deckhands on vessels carrying more than 50 passengers must be adequately trained. The crew members on a vessel of at least 200 gross tons, except those operated exclusively on lakes and rivers, are required to hold merchant mariner documents and 50 percent of the unlicensed deck crew must be rated as at least an able seaman.

(4) The vessel owner or operator must comply with the lifesaving arrangements located in 46 CFR part 180, except that inflatable liferafts are required for primary lifesaving. A rescue boat or suitable rescue arrangement must be provided to the satisfaction of the OCMI.

(5) The vessel owner or operator must comply with the fire protection requirements located in 46 CFR part 181. When a vessel fails to meet the fire protection and structural fire protection requirements of 46 CFR chapter I, subchapter T, the vessel owner or operator must meet equivalent requirements to the satisfaction of the cognizant OCMI or submit plans for approval from the Coast Guard Marine Safety Center.

(6) At a minimum, the owner or operator must outfit the vessel with portable fire extinguishers in compliance with 46 CFR 76.50. In addition, the vessel must meet any additional requirements of the OCMI, even if they exceed the requirements in 46 CFR 76.50.

(7) In addition to the means-of-escape requirements of 46 CFR 177.500, the

vessel owner or operator must also meet the requirements for means of escape found in 46 CFR 78.47–40.

(d) The OCMI conducts an inspection and may issue a COI if the vessel meets these requirements. The COI's condition of operation must contain the following endorsement: ''This vessel is operating under an exemption afforded in The Passenger Vessel Safety Act of 1993 and as such is limited to domestic voyages and a maximum of passengers and may be subject to additional regulations and restrictions as provided for in Sections 511 and 512 of the Act.''

60. In § 175.400, add a new term to the list of definitions, in alphabetical order, to read as follows:

§ 175.400 Definition of terms used in this subchapter.

* * * * *

Submersible vessel means a vessel that is capable of operating below the surface of the water.

* * * * *

PART 188—GENERAL PROVISIONS

61. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

62. In § 188.05–1(a), redesignate table 188.05–1(A) as table 188.05–1(a) and revise it to read as follows:

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Table 188.05-1(a)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	**Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]**	**Subchapter I--Cargo and Miscellaneous Vessels.[2] and 5**	**Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]**	**Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]**	**Subchapter O--Certain Bulk and Dangerous Cargoes.[10]**
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1)	Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 188.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	ii) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 188.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceano-graphic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels < 100 gross tons carrying more than 6 passengers or passengers-for-hire.[7] ii) All vessels ≥ 100 gross tons carrying more than 12 passengers or passengers-for-hire.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iiii) These regulations do not apply to--: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), and N (Dangerous Cargoes) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in the Passenger Vessel Safety Act of 1993 (46 U.S.C. 2101(21)(21a)). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or linmology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

63. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 46 CFR 1.46.

64. In § 199.30, revise the term ''passenger vessel''.

§ 199.30 Definitions.

* * * * *

Passenger vessel means—

(1) On an international voyage, a vessel of at least 100 tons gross tonnage carrying more than 12 passengers; and

(2) On other than an international voyage, a vessel of at least 100 tons gross tonnage—

(i) Carrying more than 12 passengers, including at least one passenger-for-hire; or

(ii) That is chartered and carrying more than 12 passengers; or

(iii) That is a submersible vessel carrying at least one passenger-for-hire.

* * * * *

Dated: March 24, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–4777 Filed 3–1–00; 8:45 am]

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