AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

# Federal Register

2–5–01 Monday
Vol. 66 No. 24 Feb. 5, 2001
Pages 8885–9026

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $638, or $697 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $253. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $9.00 for each issue, or $9.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 66 FR 12345.

## SUBSCRIPTIONS AND COPIES

| | |
|---|---|
| **PUBLIC** | |
| **Subscriptions:** | |
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **512–1806** |
| **General online information** | **202–512–1530; 1–888–293–6498** |
| **Single copies/back copies:** | |
| Paper or fiche | **512–1800** |
| Assistance with public single copies | **512–1803** |
| **FEDERAL AGENCIES** | |
| **Subscriptions:** | |
| Paper or fiche | **523–5243** |
| Assistance with Federal agency subscriptions | **523–5243** |

**FEDERAL REGISTER WORKSHOP**

### THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** Sponsored by the Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

### WASHINGTON, DC

**WHEN:** February 20, 2001, from 9:00 a.m. to Noon (E.S.T.)

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

**RESERVATIONS:** 202–523–4538

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 66, No. 24

Monday, February 5, 2001

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Farm Service Agency
*See* Food and Nutrition Service
*See* Forest Service
*See* Natural Resources Conservation Service
*See* Rural Business-Cooperative Service
*See* Rural Housing Service
*See* Rural Utilities Service

**Alcohol, Tobacco and Firearms Bureau**
PROPOSED RULES
Alcohol; viticultural area designations:
Alexander Valley and Dry Creek Valley, CA, 8925–8926

**Animal and Plant Health Inspection Service**
RULES
Exportation and importation of animals and animal products:
Horses from contagious equine meritis (CEM)-affected countries—
Oregon; receipt authorization; effective date delay, 8887

**Army Department**
NOTICES
Meetings:
Science Board, 8947

**Census Bureau**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 8929–8930

**Chemical Safety and Hazard Investigation Board**
PROPOSED RULES
Attorney misconduct, witness sequestration, and exclusion of counsel, 8926–8928

**Commerce Department**
*See* Census Bureau
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Institute of Standards and Technology
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 8929

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Ukraine, 8944–8945
Export visa requirements; certification, waivers, etc.:
Oman, 8945–8946

**Comptroller of the Currency**
NOTICES
Reports and guidance documents; availability, etc.:
Capital and accounting standards; differences among Federal banking and thrift agencies; report to Congress, 8993–9000

**Defense Department**
*See* Army Department
*See* Defense Logistics Agency
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request; correction, 8946–8947

**Defense Logistics Agency**
NOTICES
Environmental statements; notice of intent:
Excess mercury; national defense stockpile inventory; long term management, 8947–8949

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 8949

**Environmental Protection Agency**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 8960–8961

**Executive Office of the President**
*See* Management and Budget Office

**Farm Service Agency**
RULES
Program regulations:
Loans to Indian Tribes and tribal corporations
Effective date delay, 8886

**Federal Communications Commission**
RULES
Radio services, special:
Private land mobile services—
Exclusivity and frequency assignments policies; examination; revision, 8899–8903
NOTICES
Common carrier services:
Wireless telecommunications services—
747-762 and 777-792 MHz bands; licenses auction postponed, 8972
FM broadcast construciton permits auction; minimum opening bids and other procedural issues, 8961–8971
International telecommunications services; process to update International Bureau's records for carriers that provide services, 8972–8973
Meetings:
North American Numbering Council, 8973–8974

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings:
Electric Energy, Inc., et al., 8954–8956
PECO Energy Co. et al., 8956–8957
Potomac Electric Power Co. et al., 8957–8958
Hydroelectric applications, 8958–8959
Meetings; Sunshine Act, 8959–8960

*Applications, hearings, determinations, etc.:*
Alliant Energy Corporate Services, Inc., 8950
Axia Energy, L.P., 8950
Columbia Gas Transmission Corp. et al., 8950
Dominion Transmission, Inc., et al., 8951
El Dorado Energy, LLC, 8951
EWO Marketing, L.P., 8951–8952
Gulf South Pipeline Co., LP, 8952
Iroquois Gas Transmission System, L.P., 8952
Petal Gas Storage, L.L.C., 8952–8953
Reliant Energy Gas Transmission Co., 8953–8954
WestGas InterState, Inc., 8954
Westmoreland-LG&E Partners, 8954

**Federal Reserve System**
**NOTICES**
Meetings; Sunshine Act, 8974

**Food and Nutrition Service**
**RULES**
Child nutrition programs:
Women, infants, and children; special supplemental nutrition program—
Vendor management systems; mandatory selection criteria, limitation of vendors, training requirements, etc.; effective date delay, 8885
Food stamp program:
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation—
Personal responsibility provisions; effective date delay, 8886
Retail food store definition and program authorization guidance
Effective date delay, 8885–8886

**Foreign-Trade Zones Board**
**NOTICES**
*Applications, hearings, determinations, etc.:*
Washington
ARCO Products Co.; oil refinery complex, 8930–8931

**Forest Service**
**RULES**
Special areas:
Roadless area conservation
Effective date delay, 8899

**General Services Administration**
**NOTICES**
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request; correction, 8946–8947

**Health and Human Services Department**
*See* Health Care Financing Administration
*See* Substance Abuse and Mental Health Services Administration

**Health Care Financing Administration**
**NOTICES**
Meetings:
Medicare Coverage Advisory Committee, 8974–8975

**Housing and Urban Development Department**
**RULES**
Public and Indian housing:
Public housing agency plans; poverty deconcentration and public housing integration; deconcentration component applicability date change, 8897–8898

**Indian Affairs Bureau**
**RULES**
Financial activities:
Loan guaranty, insurance, and interest subsidy; revision
Effective date delay, 8898
Land and water:
Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition
Effective date delay, 8899

**Interior Department**
*See* Indian Affairs Bureau
*See* Land Management Bureau
*See* Minerals Management Service
*See* Reclamation Bureau

**International Trade Administration**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 8931
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
Various countries, 8931–8939
Corrosion resistant carbon steel flat products from—
Germany, 8939
Stainless steel bar from—
India, 8939–8942

**International Trade Commission**
**NOTICES**
Import investigations:
Silicomanganese from—
Various countries, 8981
Silicon metal from—
Various countries, 8981
Stainless steel butt-weld pipe fittings from—
Various countries, 8981–8982

**Justice Department**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Community Oriented Policing Services Office—
COPS Making Officer Redeployment Effective, 8982
Pollution control; consent judgments:
Cypress Amax Mineral Co. et al., 8982–8983
Goodyear Tire & Rubber Co., 8983
Stringfellow, J.B., Jr., et al., 8983–8984

**Land Management Bureau**
**NOTICES**
Realty actions; sales, leases, etc.:
Colorado, 8977–8978
Withdrawal and reservation of lands:
Florida, 8978

**Management and Budget Office**
**NOTICES**
Budget rescissions and deferrals, 8985–8986

**Minerals Management Service**
NOTICES
Oil and gas leases:
Wyoming; Federal and State crude oil bids, 8978–8979
Royalty management:
Indian gas production in designated areas not associated with index zones; additional royalty payments; major portion prices and due dates, 8979–8980

**National Aeronautics and Space Administration**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 8984
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request; correction, 8946–8947

**National Institute of Standards and Technology**
NOTICES
Meetings:
Computing and real-time control systems; security requirements and specifications; development strategies; government industry information technology forum, 8942–8943

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Atlantic coastal fisheries cooperative management—
Atlantic Coast horseshoe crab, 8906–8911
Atlantic highly migratory species—
Blue shark, 8903–8904
Northeastern United States fisheries—
Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog, 8904–8906
NOTICES
Committees; establishment, renewal, termination, etc.:
Coral Reef Ecosystem Reserve Council, 8943–8944

**National Science Foundation**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 8984–8985

**Natural Resources Conservation Service**
NOTICES
Field office technical guides; changes:
North Carolina, 8929

**Nuclear Regulatory Commission**
NOTICES
Meetings; Sunshine Act, 8985

**Office of Management and Budget**
*See* Management and Budget Office

**Personnel Management Office**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 8986

**Presidential Documents**
PROCLAMATIONS
Special observances:
African American History Month, National (Proc. 7404), 9023–9026

**Public Health Service**
*See* Substance Abuse and Mental Health Services Administration

**Reclamation Bureau**
NOTICES
Meetings:
Glen Canyon Adaptive Management Work Group and Glen Canyon Technical Work Group, 8980–8981

**Rural Business-Cooperative Service**
RULES
Program regulations:
Loans to Indian Tribes and tribal corporations
Effective date delay, 8886

**Rural Housing Service**
RULES
Program regulations:
Loans to Indian Tribes and tribal corporations
Effective date delay, 8886

**Rural Utilities Service**
RULES
Program regulations:
Loans to Indian Tribes and tribal corporations
Effective date delay, 8886

**Securities and Exchange Commission**
RULES
Securities:
Abandoned offerings; integration, 8887–8897
Mutual fund after-tax returns; disclosure, 9001–9021
PROPOSED RULES
Securities:
Self-regulatory organizations; proposed rule changes; filing requirements, 8912–8925
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 8986–8988
Self-regulatory organizations; proposed rule changes:
Government Securities Clearing Corp., 8988
Philadelphia Stock Exchange, Inc., 8988–8991
*Applications, hearings, determinations, etc.:*
3Dshopping.com, 8988

**Substance Abuse and Mental Health Services Administration**
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 8975–8977

**Tennessee Valley Authority**
NOTICES
Agency information collection activites:
Proposed collection; comment request, 8991

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Thrift Supervision Office**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 9000

**Transportation Department**
**NOTICES**
Aviation proceedings:
Agreements filed; weekly receipts, 8991–8992
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 8992–8993

**Treasury Department**
*See* Alcohol, Tobacco and Firearms Bureau
*See* Comptroller of the Currency
*See* Thrift Supervision Office

**Separate Parts In This Issue**

**Part II**
Securities and Exchange Commission, 9001–9021

**Part III**
The President, 9023–9026

**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**3 CFR**

**Proclamations:**

7404 ..... 9025

**7 CFR**

246 ..... 8885
271 ..... 8885
272 ..... 8886
273 ..... 8886
278 ..... 8885
770 ..... 8886
1823 ..... 8886
1902 ..... 8886
1951 ..... 8886
1956 ..... 8886

**9 CFR**

93 ..... 8887

**17 CFR**

230 (2 documents) ..... 8887, 9002
239 ..... 9002
270 ..... 9002
274 ..... 9002

**Proposed Rules:**

240 ..... 8912
249 ..... 8912

**24 CFR**

903 ..... 8897

**25 CFR**

103 ..... 8898
151 ..... 8899

**27 CFR**

**Proposed Rules:**

9 ..... 8925

**36 CFR**

294 ..... 8899

**40 CFR**

**Proposed Rules:**

1610 ..... 8926

**47 CFR**

90 ..... 8899

**50 CFR**

635 ..... 8903
648 ..... 8904
697 ..... 8906

# Rules and Regulations

Federal Register
Vol. 66, No. 24
Monday, February 5, 2001

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

### Food and Nutrition Service

### 7 CFR Part 246

**RIN 0584–AA80**

### Special Supplemental Nutrition Program for Women, Infants and Children (WIC); Food Delivery Systems: Delay of Effective Date

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled Special Supplemental Nutrition Program for Women, Infants and Children (WIC); Food Delivery Systems, published in the **Federal Register** on December 29, 2000, 65 FR 83248. The rule strengthens vendor management in retail food delivery systems by establishing mandatory selection criteria, training requirements, criteria to be used to certify high-risk vendors, and monitoring requirements, including compliance investigations. To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3), seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule effective immediately upon publication.

**DATES:** The effective date of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC); Food Delivery Systems regulation, published in the **Federal Register** on December 29, 2000, at 65 FR 83248, is delayed for 60 days, from February 27, 2001, to a new effective date of April 28, 2001.

**FOR FURTHER INFORMATION CONTACT:** Sheri Ackerman, Regulatory Control Officer, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or by telephone to (703) 305–2246.

Dated: January 29, 2001.

**Ann M. Veneman,**

*Secretary.*

[FR Doc. 01–2862 Filed 2–2–01; 8:45 am]

**BILLING CODE 3410–30–M**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 271 and 278

**RIN 0584–AB90**

### Food Stamp Program: Revisions to the Retail Food Store Definition and Program Authorization Guidance: Delay of Effective Date

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled Food Stamp Program: Food Revisions to the Retail Food Store Definition and Program Authorization Guidance, published in the **Federal Register** on January 12, 2001, 66 FR 2795. The rule implements provisions of the Food Stamp Progam Improvements Act of 1994 to revise the criteria for eligibility of firms to participate in the Food Stamp Program as retail food stores, and to provide for notification to such firms of eligibility criteria for participation in the Food Stamp Program. To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule effective immediately upon publication.

**DATES:** The effective date of the Food Stamp Program: Food Stamp Program: Revisions to the Retail Food Store Definition and Program Authorization Guidance, published in the **Federal Register** on January 12, 2001, at 66 FR 2795, is delayed for 60 days, from February 12, 2001, to a new effective date of April 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Sheri Ackerman, Regulatory Control Officer, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302–1954 or by telephone to (703) 305–2246.

Dated: January 29, 2001.

**Ann M. Veneman,**

*Secretary.*

[FR Doc. 01–2863 Filed 2–02–01; 8:45am]

BILLING CODE 3410–30–M

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 272 and 273

**RIN: 0584–AC39**

### Food Stamp Program: Personal Responsibility of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Delay of Effective Date

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, published in the **Federal Register** on January 17, 2001, 66 FR 4438. The rule implements 13 provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. To the extent that 5 U.S.C. section 553 applies to this section, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register,** is based on the good cause exceptions in 5 U.S.C. section 553(b) B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule effective immediately upon publication.

**DATES:** The effective date of the Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, published in the **Federal Register** on January 17, 2001, at 66 FR 4438, is delayed for 60 days, from April 2, 2001, to a new effective date of June 1, 2001 except for the amendments to 7 CFR 272.2(d)(1)(xiii) which retains the effective date of August 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Sheri Ackerman, Regulatory Control Officer, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or by telephone to (703) 305–2246.

Dated: January 29, 2001.

**Ann M. Veneman,**

*Secretary.*

[FR Doc. 01–2864 Filed 2–2–01; 8:45 am]

BILLING CODE 3410–30–M

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Part 770

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

### 7 CFR Parts 1823, 1902, 1951 and 1956

**RIN 0560–AF43**

### Loans to Indian Tribes and Tribal Corporations: Delay of Effective Date

**AGENCY:** Farm Service Agency, Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Department of Agriculture.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled Loans to Indian Tribes and Tribal Corporations, published in the **Federal Register** on January 9, 2001, 66 FR 1563. That rule consolidates and revises the Indian Tribal Land Acquisition Program regulations. To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule effective immediately upon publication.

**EFFECTIVE DATES:** The effective date of the Loans to Indian Tribes and Tribal Corporations, published in the **Federal Register** on January 9, 2001, at 66 FR 1563, is delayed for 60 days, from February 8, 2001 to a new effective date of April 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Gary West, Senior Loan Officer, Farm Loan Program, Loan Servicing and Property Management Division, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523. Telephone (202) 690–0949.

Dated: January 29, 2001.

**Ann M. Veneman,**

*Secretary.*

[FR Doc. 01–2868 Filed 2–2–01; 8:45 am]

BILLING CODE 3410–05–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 93

**[Docket No. 00–115–2]**

### Specifically Approved States Authorized to Receive Mares and Stallions Imported from Regions. Where CEM Exists: Delay of Effective Date

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final Rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled Specifically Approved States Authorized to Receive Mares and Stallions Imported from Regions Where CEM Exists, published in the **Federal Register** on December 18, 2000, 65 FR 78897. The rule amends the animal importation regulations in 9 CFR part 93 by adding Oregon to the lists of States approved to receive certain mares and stallions imported into the United States from regions affected with contagious equine metritis (CEM). To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule effective immediately upon publication.

**DATES:** The effective date of the Specifically Approved States Authorized to Receive Mares and Stallions Imported from Regions Where CEM Exists regulation, published in the **Federal Register** on December 18, 2000 at 65 FR 78897, is delayed for 60 days, from February 16, 2001 to a new effective date of April 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Karen James at (301) 734–8364.

Dated: January 29, 2001.

**Ann M. Veneman,**

*Secretary.*

[FR Doc. 01–2866 Filed 2–2–01; 8:45 am]

**BILLING CODE 3410–34–M**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 230

**[Release No. 33–7943; File No. S7–30–98]**

**RIN 3235–AG83**

### Integration of Abandoned Offerings

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; solicitation of comment on Paperwork Reduction Act burden estimate.

**SUMMARY:** The Securities and Exchange Commission is adopting new Rule 155 under the Securities Act to provide safe harbors for a registered offering following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offerings in either case. This new rule is intended to enhance an issuer's ability to switch from a private offering to a registered offering, or vice-versa, in response to changing market conditions.

To facilitate reliance on the public-to-private safe harbor, we are amending Securities Act Rule 477 to provide automatic effectiveness for any application to withdraw an entire registration statement before it becomes effective unless the Commission objects within 15 days after the issuer files that application. We are amending Rules 429 and 457 to move provisions addressing the offset of filing fees to Rule 457. We also amend Rule 457 to permit filing fees to be offset from withdrawn registration statements and to provide other technical changes to the calculation of filing fees. These amendments, along with new Rule 155, are intended to reduce the financial risk of a registered offering that is withdrawn.

**EFFECTIVE DATE:** March 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** Anne M. Krauskopf, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900.

**SUPPLEMENTARY INFORMATION:** We are adopting new Rule 155 [1] and amendments to Rules 429,[2] 457,[3] and 477 [4] under the Securities Act of 1933.[5]

### I. Executive Summary

Securities Act registration provides investors with the benefits of full and fair disclosure and civil remedies for false or misleading disclosure and violations of the registration and prospectus delivery requirements. In November 1998, we published for comment proposals to modernize the registration process for offers and sales of securities under the Securities Act (the ''1998 proposals'').[6] The 1998 proposals recognized that the benefits of registration are furthered if the Commission continues to make the registration system flexible enough to accommodate dynamic evolution of the capital markets.

One subject of the 1998 proposals was the integration of private and registered offerings. Because conditions in the securities markets may shift quickly, companies may find that the relative attractiveness of making a registered offering instead of a private offering has changed. For example, a company that files a registration statement for an initial public offering may find that there are too few potential investors to make a registered offering worthwhile. Conversely, a company that starts a private offering may find sufficient investor interest to justify making a registered offering.

The 1998 proposals included proposed amendments to Rule 152 [7] to create new safe harbors that would facilitate changing an offering from private to registered, or vice versa. Commenters who addressed these

[1] 17 CFR 230.155.

[2] 17 CFR 230.429.

[3] 17 CFR 230.457.

[4] 17 CFR 230.477.

[5] 15 U.S.C. 77a *et seq.*

[6] Release No. 33–7606A (Nov. 13, 1998) (63 FR 67174). We extended the comment deadline for the 1998 proposals to June 30, 1999 in Release No. 33–7659 (64 FR 15143). The public comments we received are available in our Public Reference Room at 459 Fifth Street, NW., Washington, DC 20549, in File No. S7–30–98. Public comments submitted by electronic mail are on our website, at *www.sec.gov/rules/s73098.htm.*

[7] 17 CFR 230.152. Rule 152 provides that section 4(2) (15 U.S.C. 77d(2)) is available for a transaction not involving any public offering at the time of the transaction although the issuer later decides to make a public offering and/or files a registration statement.

proposals responded favorably.[8] Noting that these proposals do not depend on the other 1998 proposals, some commenters[9] urged us to adopt them without regard to the other 1998 proposals.[10] We believe that the proposed Rule 152 amendments that we adopt in part today as new Rule 155 are an appropriate step in adapting the registration process to the rapidly changing dynamics of the capital markets.[11] We are concerned particularly about reducing the capital-raising costs of small businesses and believe that adopting Rule 155 will advance that goal significantly.

The new integration safe harbors that we adopt today as new Rule 155 provide clarity and certainty regarding two common situations, and do not otherwise affect traditional integration analyses.[12] Under Rule 155, we provide conditions under which an issuer that begins a private offering but sells no securities will be able to abandon it and begin a registered offering. Any private offering that relies on this integration safe harbor will need to satisfy the conditions of a private offering exemption, so that the private offering is bona fide.[13] In addition, the issuer and any person acting on its behalf will need to terminate all offering activity with respect to the private offering. Any prospectus filed as part of the registration statement will need to include disclosure regarding abandonment of the private offering. The issuer also will need to wait 30 days after abandoning the private offering before filing the registration statement unless securities were offered in the private offering only to persons who were (or who the issuer reasonably believes were) accredited investors[14] or sophisticated.[15]

New Rule 155 also provides an integration safe harbor that will permit an issuer that started a registered offering to withdraw the registration statement before any securities are sold[16] and then begin a private offering. To use the safe harbor, the issuer and any person acting on its behalf will need to wait 30 days after the effective date of withdrawal of the registration statement before commencing the private offering. The issuer must provide each offeree in the private offering with information concerning withdrawal of the registration statement, the fact that the private offering is unregistered and the legal implications of its unregistered status. In addition, any disclosure document used in the private offering must disclose any changes in the issuer's business or financial condition that occurred after the issuer filed the registration statement that are material to the investment decision in the private offering.

Rule 477 sets forth the conditions for withdrawing a Securities Act registration statement. We amend this rule so that an issuer's application to withdraw an entire pre-effective registration statement will become effective automatically upon filing with the Commission unless the Commission objects within 15 days after the issuer files the withdrawal application. This amendment will facilitate reliance on the registered-to-private safe harbor by eliminating potential administrative delay in withdrawing the registration statement.

Under the amendments to Rule 457, fees paid for a withdrawn registration statement will be available to the issuer for use with its future registration statements regardless of whether the class of securities is the same or different. This should benefit issuers by reducing the financial risk of an abandoned registered offering. We also amend Rule 429 to move its fee provisions to Rule 457 and to restate it in plain English.

## II. Rule 155

### *A. The Integration Doctrine*

The integration doctrine provides an analytical framework for determining whether multiple securities transactions should be considered part of the same offering. This analysis helps to determine whether registration under Section 5 of the Securities Act is required or an exemption is available for the entire offering. The integration doctrine, which has existed since 1933,[17] prevents an issuer from improperly avoiding registration by artificially dividing a single offering so that Securities Act exemptions appear to apply to the individual parts where none would be available for the whole.[18] Improper reliance on an exemption can harm investors by depriving them of the benefits of full and fair disclosure or of the civil remedies that flow from registration for material misstatements and omissions of fact.

Whether particular securities offerings should be integrated calls for an analysis of the specific facts and circumstances. In the 1960s, we issued two interpretive releases identifying five factors to consider in making this determination.[19] The new rule we adopt today does not modify or rescind the five-factor test set forth in those releases.[20] We also have created safe harbors from integration that provide

[8] *See, e.g.,* Letters of American Bar Association (''ABA''), American Corporate Counsel Association, American Society of Corporate Secretaries, The Association of the Bar of the City of New York (''NY City Bar''), The Business Roundtable, Cleary, Gottlieb, Steen & Hamilton (''Cleary''), Fried, Frank, Harris, Shriver & Jacobson (''Fried Frank''), Intel Corporation, National Association of Real Estate Investment Trusts (''NAREIT''), National Venture Capital Association, and Pennsylvania Securities Commission.

[9] Letters of ABA, Cleary and NY City Bar.

[10] The 1998 proposals also included proposed Rule 159, which we continue to consider as a separate rulemaking project. This proposed rule would permit all offers and sales in a negotiated transaction described in Rule 145 (17 CFR 230.145) to be registered under Section 5 notwithstanding the fact that certain target company shareholders sign agreements with the acquiror to vote in favor of the transaction prior to the filing or effective date of the registration statement. As provided in the 1998 proposals, availability of proposed Rule 159 would be subject to conditions.

[11] The 1998 proposals included other proposed amendments to Rule 152 to codify when a private offering would be deemed completed so that it would not be integrated with a later registered offering, including a registered resale of the same securities. Because we are not adopting those proposed amendments, Rule 152 and related staff interpretations as to when a private offering is deemed ''completed'' are unaffected.

[12] These new safe harbors address only registration requirements under the Securities Act and are not intended to affect antifraud law.

[13] For purposes of the rule, a ''private offering'' is defined as an unregistered offering of securities that is exempt from registration under section 4(2) or 4(6) of the Securities Act (15 U.S.C. 77d(6)) or Rule 506 of Regulation D (17 CFR 230.506). An offering that satisfies the conditions of Rule 506 is deemed not to involve a public offering for purposes of section 4(2).

[14] For this purpose, ''accredited investor'' is defined in Rule 501(a) of Regulation D (17 CFR 230.501(a)).

[15] For this purpose, an investor is sophisticated if the investor, either alone or with his or her representative, has such knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment. *See* Rule 506(b)(2)(ii) of Regulation D.

[16] Under Section 5(a) of the Securities Act (15 U.S.C. 77e(a)), no securities may be sold in a registered offering until the registration statement becomes effective.

[17] *See* Release No. 33–97 (Dec. 28, 1933).

[18] Integration of an offering for which a private offering exemption is claimed with another offering (or offerings) would result in the loss of an exemption for one or more of the offerings unless an exemption is available for the integrated offering.

[19] Release No. 33–4434 (Dec. 6, 1961) [26 FR 11896], and Release No. 33–4552 (Nov. 6, 1962) [27 FR 11316].

[20] The five factors identified as relevant to the question of integration are as follows:

1. Are the offerings part of a single plan of financing?
2. Do the offerings have the same general purpose?
3. Are the offerings of the same class of security?
4. Are the offerings made at or about the same time?
5. Are the securities sold for the same type of consideration?

The five factors also are included in Rule 502(a) of Regulation D [17 CFR 230.502(a)].

certainty in particular circumstances.[21] However, these integration safe harbors do not address a registered offering that follows an abandoned private offering, or a private offering that follows a withdrawn registered offering. New Rule 155 will facilitate the capital-raising process by creating safe harbors designed specifically for these situations.[22]

*B. Non-Exclusive Safe Harbors and Schemes to Evade*

In the public comments, we were asked to clarify that the proposed integration safe harbor conditions would not be exclusive.[23] We have done so in the Preliminary Note to the rule. Regardless of whether an issuer is relying on Rule 155, the issuer also may look to the traditional five-factor test to determine whether integration is required.

Similarly, like other safe harbors,[24] Rule 155 is not available to any transaction or series of transactions that, although in technical compliance, is part of a plan or scheme to evade the registration requirements of the Securities Act. As adopted, the Preliminary Note to Rule 155 codifies this principle as well.[25]

*C. Rule 155(a)—Definition of Private Offering*

As adopted, the rule defines ''private offering,'' as proposed, as an unregistered offering of securities that is exempt from registration under section 4(2) or 4(6)[26] of the Securities Act or Rule 506 of Regulation D.[27] This definition applies for purposes of both safe harbors under the new rule. This definition is specific to Rule 155, however, and does not purport to define the term ''private offering'' for other purposes.

Satisfaction of the Rule 155 non-integration conditions will not assure the availability of a private offering exemption. A person who claims an exemption from Section 5 of the Securities Act has the burden of proving that the offering satisfies the conditions of that exemption.[28]

Some commenters[29] suggested that we expand the definition of ''private offering'' to include state exemptions based on the North American Securities Administrators Association, Inc. Model Accredited Investor Exemption.[30] These state exemptions permit general solicitation as long as no sales are made to non-accredited investors. However, we have long construed general solicitation or advertising to impart a public character to an offering. Thus, we do not believe that general solicitation or advertising is permissible in an offering under section 4(2).[31] Similarly, both section 4(6) and Rule 506 expressly forbid general solicitation or advertising.[32] For this reason, we decline to expand the term ''private offering'' in Rule 155 in the manner suggested.

We also decline to extend Rule 155 to offerings exempted by Rule 505 of Regulation D,[33] as some commenters requested.[34] Unlike Rule 506, Rule 505 permits sales to persons who are neither accredited nor financially sophisticated.[35] Because these persons may purchase in Rule 505 offerings, investor protection considerations weigh against including Rule 505 offerings in the new safe harbors.[36]

*D. Rule 155(b)—Abandoned Private Offering Followed by a Registered Offering*

An issuer that starts a private offering, abandons it before any securities are sold, and then files a registration statement incurs a risk that the registered offering could be integrated with the private offering under the five-factor test. If the offerings were integrated, the Commission or the courts could find a violation of Section 5(c) by virtue of the pre-filing offers.

Recognizing that an issuer may want to take advantage of rapidly changing market conditions to make a registered offering instead of completing a private offering already started, we proposed to amend Rule 152 to add a safe harbor for making this switch.[37] This proposal, which we adopt today with some modifications as Rule 155(b), enables an issuer to abandon a private offering and follow it soon with a registered offering, without integration concerns.

As adopted, the conditions of Rule 155(b) are as follows:

- No securities were sold in the private offering;
- The issuer and any person(s) acting on its behalf terminate all offering activity in the private offering before the issuer files the registration statement;
- Any prospectus filed as part of the registration statement discloses information about the abandoned private offering, including:

[21] For example, Rule 502(a) states that offers and sales made more than six months before the start of, or more than six months after completion of, a Regulation D offering will not be integrated with the Regulation D offering, as long as there are no offers and sales of the same or a similar class of securities (other than through employee benefit plans) during that period.

Other integration safe harbors are Rule 147(b)(2) (17 CFR 230.147(b)(2)) (for exempt intrastate offerings), Rule 251(c) (17 CFR 230.251(c)) (for small offerings by non-reporting issuers under Regulation A), and Rule 701(f) (17 CFR 230.701(f)) (for non-reporting issuers' exempt offerings to employees and consultants under written compensatory benefit plans).

Equity securities issued in exempt rights offerings by foreign private issuers under Rule 801 (17 CFR 230.801) and securities issued in exempt exchange offers and business combinations involving foreign private issuers under Rule 801 [17 CFR 230.802] are not subject to integration with offerings exempt from registration under other provisions of the Securities Act.

Offshore transactions made in compliance with Regulation S are not integrated with registered domestic offerings or domestic offerings that satisfy the requirements for an exemption from registration under the Securities Act, even if undertaken contemporaneously. Release No. 33–6862 (Apr. 24, 1990)

[22] Rule 155, like Rule 152, does not address whether two or more private offerings should be integrated with each other. The five-factor test continues to apply to this question, as does Rule 502(a) where one or more of the private offerings relies on Regulation D. Moreover, the amendments adopted today do not address the staff's policy position with respect to concurrent private and registered offerings that was articulated in *Black Box, Inc.* (Jun. 26, 1990) Q. 3 and *Squadron, Ellenoff, Pleasant & Lehrer* (Feb. 28, 1992).

[23] Letters of ABA and New York City Bar.

[24] *See, e.g.,* Preliminary Note 6 to Regulation D, and Preliminary Note 2 to Regulation S.

[25] For example, the Rule 155(b) safe harbor, described in Section II.D below, would not be available if, notwithstanding technical compliance with the rule, the issuer attempts to register on a primary basis a transaction that in fact was completed privately.

[26] Section 4(6) was added to the Securities Act in 1980 by the Small Business Issuers' Simplification Act of 1980, § 602, Pub. L. No. 96–477, 94 Stat. 2294 (codified at 15 U.S.C. 77d(6)). Section 4(6) exempts a transaction that does not exceed $5 million, if offers or sales are made only to accredited investors and other conditions are met.

[27] Rule 155(a).

[28] Release No. 33–4552 (Nov. 6, 1962), and *SEC* v. *Ralston Purina Co.,* 346 U.S. 119, 126 (1953).

[29] Letters of North American Securities Administrators Association (''NASAA'') and Texas State Securities Board.

[30] This model exemption was adopted by NASAA on April 27, 1997. NASAA Rep. (CCH) Para. 361. It has been adopted, in all or substantial part, by 25 states. Blue Sky Reporter (CCH) Para. 6471.

[31] Release No. 33–4552 (Nov. 6, 1962).

[32] Both Section 4(6) and Rule 506 have other conditions in addition to the prohibition of general solicitation and advertising.

[33] 17 CFR 230.505. Rule 505 provides an exemption for offerings up to $5 million within a 12-month period, if certain conditions are met. The Commission created this exemption under section 3(b) of the Securities Act (15 U.S.C. 77c(b)).

[34] Letters of Cleary, Joseph A. Grundfest *et al.,* NAREIT, NY City Bar, New York State Bar Association (''NY State Bar'').

[35] Investors in a Rule 505 offering who are not accredited must be limited to 35, but they need not be sophisticated.

[36] Consistent with current staff interpretations of Rule 152, the Rule 155 safe harbors will be available for a Rule 505 offering that also satisfies the requirements of Rule 506 or Section 4(6). *The Immune Response Corp.* (Nov. 2, 1987).

[37] Proposed Rule 152(b), Release No. 33–7606A.

—The size and nature of the private offering,[38]
—The date on which the issuer terminated all offering activity in the private offering,
—That any offers to buy or indications of interest in the private offering were rejected or otherwise not accepted, and
—That the prospectus delivered in the registered offering supersedes any selling material used in the private offering; and

• The issuer does not file the registration statement until at least 30 calendar days after termination of all offering activity in the private offering unless the issuer and any person acting on its behalf offered securities in the private offering only to persons who were (or who the issuer reasonably believes were) accredited investors or sophisticated.

An issuer that relies on the safe harbor must fully comply with all of its applicable conditions. The conditions are designed to assure that there is a clean break between the private and registered offerings and that persons who were offered securities in the abandoned private offering understand this break as they consider an investment in the registered offering.

For example, this safe harbor will allow an issuer to switch to a registered offering where, based on the response to an offering that the issuer commenced privately, there appears to be sufficient investor interest in a registered offering of the securities.[39] This should provide greater flexibility in matching securities offerings to market conditions, thereby increasing the efficiency of offerings and providing investors with better investment opportunities.

The 1998 proposals included a specific prohibition against general solicitation or advertising in the private offering. However, these practices are not permitted under sections 4(2) and 4(6) and Rule 506, and the safe harbor is available only where the private offering satisfies the conditions of one of these exemptions. Consequently, because the proposed prohibition would be redundant, it is not included in Rule 155(b) as adopted.

The safe harbor will be available only if the issuer and any person acting on its behalf terminate all offering activity regarding the private offering before filing the registration statement. As a further condition, the issuer may not file the registration statement sooner than 30 days after termination of all offering activity in the private offering, unless the issuer and any person acting on its behalf offered the securities privately only to persons who were (or who the issuer reasonably believes were) accredited investors or sophisticated.[40] We believe that this condition provides an additional protection against the possibility of issuers abusing the safe harbor with respect to potential investors for whom a registration statement, which requires full and balanced disclosure, is particularly important.

As originally proposed, the rule would have required the issuer to notify all private offerees that the private offering was abandoned. The 1998 proposals also would have required the issuer to inform all private offerees that the filed prospectus supersedes the prior selling materials and any indications of interest in the private offering are considered rescinded.[41] Noting that only the private offerees who participate in the registered offering need to know this information, commenters objected to notification to all private offerees.[42] We believe that limiting the disclosure provisions to persons who participate in the registered offering fulfills the purpose of the safe harbor. Under the safe harbor as adopted, the issuer will need to disclose prominently the information required by the rule in each prospectus filed as part of the registration statement and each prospectus delivered to investors.[43]

The rule as adopted requires disclosure that the prospectus delivered in the registered offering supersedes any selling materials used in the private offering. The purpose of this provision is to reduce confusion among investors in the registered offering about what information they should rely upon to make their investment decision. Nevertheless, issuers are reminded that they may be liable for any material misstatements or omissions in the private offering under the antifraud provisions of the federal securities laws.[44]

Because we want to prevent misuse of the Rule 155(b) safe harbor, we are directing the staff to monitor its use carefully. For example, we expect that the staff may request supplemental information regarding the termination of all offering activity in the private offering. In acting on requests for acceleration of the effective date of the registration statement, we assume that the staff will consider carefully whether the standards of the safe harbor are met.

*E. Rule 155(c)—Abandoned Registered Offering Followed by a Private Offering*

As discussed above, the use of general solicitation or advertising to offer a security would defeat a claim to an exemption from registration for that offer under section 4(2) or 4(6) or Rule 506.[45] The public character of a registered offering[46] may raise a question about the validity of a claim to a private offering exemption even if the registered offering is abandoned.[47]

Currently, unless an issuer waits six months following withdrawal of the registration statement before starting a private offering, the five-factor test applies to the question of whether the registered and private offerings should be integrated.[48] An issuer may file a registration statement, discover insufficient investor interest to proceed and still need financing quickly. Recognizing that this presents legal uncertainty, we proposed to amend Rule 152 to add a safe harbor from integration to be available in this circumstance.[49]

[38] This disclosure should describe the amount sought to be raised, the type of securities offered privately, and the general purpose of the abandoned private offering.

[39] The Rule 155(b) safe harbor differs from Rule 254 of Regulation A (17 CFR 230.254), which allows an issuer to publish or otherwise disseminate materials designed to determine whether there is interest in a contemplated public offering exempt under Regulation A. Rule 254 materials must be filed with the Commission on or before the date of first use, and, among other things, must state that no money or other consideration is solicited or will be accepted. In Release No. 33–7188 (Jun. 27, 1995) (60 FR 35648), the Commission proposed a general safe harbor for ''test the waters'' solicitations regarding IPOs. The more comprehensive 1998 proposals superseded that proposal.

[40] The 30-day period is analogous to Rule 254(d), under which an issuer that has a bona fide change of intention may file a registration statement if at least 30 calendar days have elapsed since the last solicitation of interest for the initially proposed Regulation A offering.

[41] As an alternative to this disclosure, the 1998 proposals would have required the issuer to file all selling materials used in the private offering as part of the registration statement. This alternative condition is not adopted because, based on comments received, few issuers would have used it. *See* Letters of Joesph A. Grundfest et al., and New York City Bar.

[42] Letters of ABA, Fried Frank, Joseph A. Grundfest et al., NAREIT, NY City Bar, and NY State Bar.

[43] Thus, the information must be included in both the section 10(a) (15 U.S.C. 77j(a)) final prospectus and any section 10 preliminary ''red herring'' prospectus used in the registered offering.

[44] *See* n.12, above.

[45] *See* Section II.C, above.

[46] *See* Letter of John J. Huber, Director, Division of Corporation Finance to Michael Bradfield, General Counsel, Board of Governors of the Federal Reserve System, regarding Bankers Trust Company (Mar. 16, 1984).

[47] *See* Litigation Release No. 10241 (Dec. 19, 1983) regarding *SEC* v. *Michael A. Traiger, Traiger Energy Investments* (U.S.D.C. C.D. Cal. Civil Action No. 83–2738–LTL Jpx).

[48] *See, e.g.,* Rule 502(a). As an interpretive matter, the staff traditionally looks to the six-month non-integration safe harbor of Regulation D even if the private offering does not rely on Regulation D for an exemption.

[49] Proposed Rule 152(c), Release No. 33–7606A.

We adopt this as Rule 155(c).[50] This safe harbor should assist issuers by reducing the financial risk of an abandoned registered offering.

The rule establishes the following conditions:

- No securities were sold in the registered offering;
- The issuer withdraws the registration statement; [51]
- The issuer and any person acting on its behalf do not commence the private offering earlier than 30 calendar days after the effective date of withdrawal of the registration statement;
- The issuer notifies each offeree in the private offering that:

—The offering is not registered under the Securities Act,
—The securities will be ''restricted securities'' as defined in Rule 144 and cannot be resold without registration unless an exemption is available,
—Purchasers do not have the protection of section 11 [52] of the Securities Act, and
—A registration statement for the abandoned offering was filed and withdrawn, specifying the effective date of the withdrawal; and

- Any disclosure document used in the private offering discloses any changes in the issuer's business or financial condition that occurred after the issuer filed the registration statement that are material to the investment decision in the private offering.

These conditions are designed to assure that the private offering is separate and distinct from the registered offering and that offerees in the private offering are aware that the legal benefits and protections in the private offering differ from those in the registered offering. Under Rule 155(c), the issuer will need to withdraw the registration statement in reliance on amended Rule 477 [53] before the issuer or any person acting on its behalf offers or sells the securities privately. The requirement that no securities were sold in the registered offering will not be satisfied if the issuer, or any person acting on its behalf, received any money or other offering consideration for the securities. Placing funds in escrow will not avoid this prohibition.[54]

To avoid confusion between the offerings, offerees in the private offering will need to know information regarding abandonment of the registered offering and legal consequences related to purchasing in an unregistered offering. These consequences are that the securities are restricted and purchasers do not have the protection of Section 11. As proposed, the issuer would have been required to provide this information and notice that the offering is not registered only to purchasers in the private offering. Upon further consideration, because all of this information is significant to an investment decision, we include in the safe harbor a requirement that the issuer make this disclosure to each offeree in the private offering. We also have added a requirement that any disclosure document used in the private offering discloses any changes in the issuer's business or financial condition that occurred after the issuer filed the registration statement that are material to the investment decision in the private offering. This requirement reduces concerns that private offerees will be influenced by outdated disclosure in the prospectus filed as part of the registration statement.

We believe that ordinarily an issuer would not be inclined to incur the costs of preparing and filing a registration statement with the intention to withdraw it later and commence a private offering. Nevertheless, we wish to assure that issuers do not use this integration safe harbor merely as a mechanism to avoid the private offering prohibition on general solicitation and advertising. At the time the private offering is made, in order to establish the availability of a private offering exemption, the issuer or any person acting on its behalf must be able to demonstrate that the private offering does not involve a general solicitation or advertising. Use of the registered offering to generate publicity for the purpose of soliciting purchasers for the private offering would be considered a plan or scheme to evade the registration requirements of the Securities Act.[55]

The 30-day waiting period is designed to reduce concerns regarding the validity of the issuer's claimed reliance on a private offering exemption. The 30-day waiting period, together with the disclosure applicable to offerees in the private offering, should assure that investors do not confuse the investment decision they are making in the private offering with the decision that they previously considered in the registered offering.

The 1998 proposals included an alternative provision that would have permitted the private offering to start within 30 days after the registration statement was withdrawn. This alternative would have required the issuer and other sellers to agree that liability under Securities Act sections 11 and 12(a)(2) [56] would apply in the private offering.[57] Commenters objected to the conditions of this alternative.[58] Based on public comment and our own analysis, we have decided not to adopt this alternative condition. If the issuer (or any person acting on its behalf) first offers the securities privately within 30 days following withdrawal of the registration statement, the safe harbor will not be available. Instead, traditional integration analyses, including the five-factor test, would determine whether the registered offering and the private offering should be integrated.

## III. Rule 477—Registration Statement Withdrawal

Rule 477 permits an issuer to withdraw a registration statement, or any amendment or exhibit to a registration statement, if the Commission finds withdrawal to be consistent with the public interest and the protection of investors and grants its consent.[59] The amendments adopted today will facilitate this process.

[50] The conditions of the new safe harbor will apply if the private offering is commenced within six months of the effective date of withdrawal of the registration statement. If more than six months elapse between these events, the issuer may avoid integration of the offerings in reliance on traditional staff interpretations. *See* n. 48, above. The issuer also may look to the five-factor test.

[51] If the issuer also filed a Form 8–A (17 CFR 249.208a) to register the class of securities under section 12 of the Exchange Act (15 U.S.C. 78(g)) concurrently with Securities Act registration, withdrawal of the Securities Act registration statement under Rule 477 will be deemed also to withdraw the corresponding Form 8–A. In situations where a Securities Act registration statement is not withdrawn but the registered offering is not pursued, the Form 8–A would remain pending under General Instruction A(d)(2) of Form 8–A. If the Form 8–A is filed to register the class of securities under section 12(g), that section provides that registration will become effective automatically 60 days after filing with the Commission. If the Form 8–A is filed to register the class of securities under section 12(b), section 12(d) provides that registration will become effective 30 days after exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration.

[52] 15 U.S.C. § 77k.

[53] *See* Section III, below, describing amendments to Securities Act Rule 477.

[54] Under section 5(a)(1), it is illegal to enter into a contract of sale for a security before the effective date of the registration statement. The pre-effective receipt of investors' funds, or the segregation of those funds into an escrow account, is presumptive evidence of an illegal pre-effective contract of sale.

[55] *See* Preliminary Note to Rule 155.

[56] 15 U.S.C. 77*l*.

[57] Specifically, the 1998 proposals for sellers' section 11 liability to investors who purchased in the private offering during the 30 days following withdrawal of the registration statement. The 1998 proposals also provided for sellers' section 12(a)(2) liability to private offering investors who purchased after the 30 days had passed, if there were purchasers during the first 30 days.

[58] Letters of ABA, Cleary, Joseph A. Grundfest et al., Morgan Stanley Dean Witter, NY City Bar, and NY State Bar.

[59] Rule 477(a).

Specifically, an application for withdrawal of an entire registration statement made before the registration statement becomes effective will be deemed granted upon filing unless, within 15 calendar days after the issuer files the application, the Commission notifies the issuer that the application will not be granted.[60] This will expedite the use of Rule 155(c) to switch from an abandoned registered offering to a private offering and will provide predictability in most cases. Any application for withdrawal following effectiveness or application for withdrawal of less than an entire registration statement will continue to require affirmative Commission consent.[61]

In all cases, the registrant must sign the application for withdrawal and state fully in it the grounds on which withdrawal is requested. The registrant must include in the application a statement that no securities were sold in the offering. If withdrawal is sought in anticipation of using the registered-to-private safe harbor of Rule 155(c), the registrant also should include in the application a statement that it may undertake a subsequent private offering relying on that safe harbor.[62]

As is the case today, the amended rule also provides that any withdrawn document remains in the Commission's public files, as does the related request for withdrawal.[63] Documents filed on EDGAR will remain posted on the EDGAR website. The Rule 477 amendments adopted today do not affect the Commission's authority to bring an enforcement action against a registrant with respect to the content of a withdrawn registration statement.

## IV. The Offset of Filing Fees and Other Technical Changes

In 1995, we expanded Rule 429[64] to provide a mechanism for issuers to offset the payment of a registration statement filing fee with fees that they previously paid for an earlier filed registration statement.[65] The amount available for use as an offset under Rule 429 equals the portion of the filing fee previously paid that is associated with any unsold securities of the same class registered on an earlier registration statement.[66] Once a filing fee has been used as an offset, those unsold securities on the earlier registration statement are deemed deregistered.[67] This practice has benefited many issuers.

Rule 429, however, also provides for the use of a combined prospectus for multiple offerings. Because the pairing of fee offset procedures and combined prospectus procedures in the same rule sometimes results in confusion as to when fee offset is available, we proposed to move the fee offset procedures into Rule 457, which addresses fee computation. We also proposed to allow an issuer to offset filing fees in the same manner when it withdraws a registration statement. We now adopt these proposals.[68]

As adopted, the amendment requires any fee offset to occur within five years of the initial filing date of the earlier registration statement.[69] The amendment also describes how the offset will be computed. Specifically, the aggregate total dollar amount of the filing fee associated with the unsold registered securities may be offset against the total filing fee due for a subsequent registration statement or registration statements. This will be the case whether the original filing fee was computed based on Rule 457(a) or Rule 457(o).

The 1998 proposals also would have required the subsequent registration statement(s) to be filed by the same registrant or its wholly-owned subsidiary. However, as a policy matter we believe that the benefits of filing fee offsets should apply across broader categories of registrants that control, or are controlled by, the original registrant. As adopted, this amendment permits the subsequent registration statement(s) to be filed by the same registrant,[70] its majority-owned subsidiary, or a parent that owns more than 50 percent of the original registrant's outstanding voting securities.[71] The issuer will need to add a note to the ''Calculation of Registration Fee'' table in the subsequent registration statement(s) explaining the fee offset similar to the note currently required by Rule 429.

As proposed, we also amend Rule 457 to codify the following staff interpretations:

- If a filing fee is paid for the registration of an offering and the same registration statement also covers the resale of the securities, no additional filing fee is required to be paid for the resale;[72] and
- Payment of a filing fee is not required for the registration of an indeterminate amount of securities to be offered solely for market-making purposes by an affiliate of the issuer.[73]

Finally, we also amend Rule 457 as proposed to clarify that the registration fee may be calculated on the basis of the maximum aggregate offering price of the securities, without regard to whether the securities are offered by the issuer or selling shareholders.[74]

[60] Rule 477(b). The 1998 proposals included a proposed amendment to Rule 477(b) providing automatic effectiveness upon filing of any application to withdraw an entire registration statement that had not yet become effective. Upon further consideration, we believe that there are circumstances, such as where the Division of Enforcement has commenced an investigation with respect to the pending registration statement, in which investor protection concerns outweigh the convenience to an issuer of a withdrawal application's immediate effectiveness. The rule as adopted balances these concerns by providing the Commission a limited period of time to notify the issuer that withdrawal of the registration statement will not be granted.

[61] An issuer may withdraw a registration statement under Rule 477 before effectiveness, or after effectiveness before any sale is made. Under section 5(a) of the Securities Act, securities may be sold in a registered offering following effectiveness of the registration statement. Due to the staff's greater need to verify that no securities were sold, amended Rule 477 does not provide for automatic effectiveness of any withdrawal application made after the registration statement became effective. However, the staff will consider these applications promptly.

[62] Rule 477(c). This statement should not include any information regarding the proposed terms of the private offering to avoid the possibility of a general solicitation. Providing this statement under Rule 477(c) is not a condition of the Rule 155(c) safe harbor, although Rule 155(c)(2) requires the issuer to withdraw the registration statement under Rule 477.

[63] Rule 477(d).

[64] 17 CFR. 230.429.

[65] Release No. 33–7168 (May 11, 1995) [60 FR 26604]. The staff also has permitted fee offset between issuers and their wholly-owned subsidiaries with no independent operations.

[66] The staff has permitted an issuer to apply the offset to different classes of securities if the issuer is eligible to file an unallocated shelf registration statement.

[67] When filing fees have been transferred to a new registration statement, a post-effective amendment is necessary to deregister unsold shares on the original registration statement only if the original registration statement was filed on Form S–8. *Ropes & Gray* (Oct. 30, 1997).

[68] The amended fee offset procedures will apply whether the registration statement is withdrawn under Rule 477 before effectiveness, or after effectiveness before any sale is made. If any securities have been sold under the registration statement following effectiveness, the issuer may not withdraw the registration statement. However, the issuer may post-effectively amend the registration statement to deregister the remaining unsold securities. As proposed and adopted, the Rule 457 amendment does not permit fee offset from unsold shares that were deregistered before the new registration statement is filed.

[69] As proposed, a fee offset would have been permitted within five years of the completion or termination of the offering registered in the earlier registration statement. However, because this is not a date that is publicly available and companies sometimes wait a considerable period before withdrawing a registration statement, we concluded that the initial filing date of the earlier registration statement would be a better benchmark.

[70] For this purpose, a successor issuer that satisfies the conditions of Securities Act Rule 405 [17 CFR 230.405] will be considered the same registrant.

[71] Rule 457(p).

[72] Rule 457(f)(5).

[73] Rule 457(q).

[74] Rule 457(o). This amendment does not affect the obligation to disclose outside the calculation of fee table the amount of securities offered for the

## V. Transition

Rule 155 and all of the amendments adopted today become effective March 7, 2001. However, to the extent that the Rule 457 amendments codify current staff interpretive positions, those positions continue to be valid before the effective date.

The Rule 155 integration safe harbors will be available to private offerings that are abandoned and registered offerings for which the registration statements are withdrawn on or after the effective date. In addition, an issuer may rely on Rule 155(b) to file a registration statement on or after the effective date for an offering that follows a private offering abandoned before the effective date. Similarly, an issuer may rely on Rule 155(c) on or after the effective date to commence a private offering that follows a registered offering withdrawn before the effective date.

## VI. Paperwork Reduction Act Analysis

Certain provisions of Rule 155 and amended Rule 477 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[75] The Commission will submit the collection of information requirements contained in these rules to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.[76] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number.[77]

Rule 155(b) provides a safe harbor from integration where an abandoned private offering is followed by a registered offering if specified conditions are satisfied. One of these conditions is that the Section 10(a) final prospectus and any Section 10 preliminary prospectus used in the registered offering disclose certain information about the abandoned private offering, so that the registered offering is not confused with the private offering. Preparing and sending the required information in a prospectus is a collection of information. We estimate that including this information in the prospectus will add one burden hour to the total burden hours applicable to the registration statement.

Rule 155(c) provides a safe harbor from integration where an abandoned registered offering is followed by a private offering. The conditions for this safe harbor require, among other things, that the issuer notify each offeree in the private offering that the registration statement for the abandoned offering was withdrawn, specifying the effective date of the withdrawal. The issuer also must notify each offeree in the private offering that the offering is not registered, the securities are ''restricted,'' and purchasers in the private offering do not have the protection of Section 11. These conditions are designed to assure that the private offering is not confused with the registered offering. Preparing and delivering this notification involves a collection of information. We estimate that this will add one burden hour with respect to each private offering that relies on the safe harbor.[78]

To avoid confusion between the offerings, Rule 155(c) also requires any disclosure document used in the private offering to disclose any changes in the issuer's business or financial condition that occurred after the issuer filed the registration statement that are material to the investment decision in the private offering. Unlike the other Rule 155 disclosure requirements described above, which always apply, this requirement will not necessarily apply to all private offerings that rely on Rule 155(c) and may require more disclosure in some cases than others where it does apply. Taking these variables into consideration, we estimate that this requirement will add six burden hours with respect to each private offering that relies on the safe harbor.

If an issuer withdraws a registration statement in anticipation of reliance on Rule 155(c), amended Rule 477 provides for the issuer to include in the withdrawal application a statement that the registrant may undertake a subsequent private offering in reliance on Rule 155(c). This condition will permit the Commission and the public to know when an issuer relies on Rule 155(c). We estimate that the collection of this information will add one burden hour to a withdrawal application.

Of the registration statements filed during the five-year period from January 1, 1995 to December 31, 1999, issuers withdrew 851 Securities Act registration statements. These withdrawals may not necessarily have been followed by private offerings. We expect nevertheless that the number of withdrawals may increase, based on the availability of new Rule 155 and amendments to Rule 477. We do not have comparable information as to the number of private offerings that were abandoned. However, we believe it is reasonable to assume that this number may approximate the number of withdrawn registration statements, and also may increase based on the availability of new Rule 155.

Assuming that on an annual basis issuers rely on Rule 155(b) for 300 abandoned private offerings and rely on Rule 155(c) for 300 abandoned registered offerings, the total associated additional burden will be 2400 hours.[79] Of the 2400 hours, we estimate that 50% (1200 internal burden hours) will be attributable to corporate staff, and 50% (1200 hours) will be attributable to external professionals retained by the issuers. The estimated cost of the external professional help is $210,000 (1200 × $175).[80]

Also assuming that on an annual basis issuers rely on amended Rule 477 for 300 abandoned registered offerings, the total associated additional burden will be 300 hours. We estimate that all 300 burden hours will be attributable to corporate staff, and no external professional costs will be incurred in connection with this disclosure.

The information collection requirements imposed by Rule 155 and amended Rule 477 is mandatory only for those issuers that choose to rely on the Rule 155 safe harbors from integration. Issuers that decide not to obtain the rule's safe harbor benefits are not required to respond. There is no mandatory retention period for the information disclosed. Responses to the collection of information with respect to Rule 155(b) and Rule 477, which will be

account of each selling security holder, consistent with the requirements of Item 507 of Regulations S–B and S–K (17 CFR 228.507 and 229.507). This amendment also does not change the staff's interpretation that secondary offerings under General Instruction I.B.3 to Form S–3 may not be included among securities registered on an unallocated basis in a Rule 415 offering. Securities offered by selling shareholders may be registered on the same registration statement as an unallocated shelf offering, but a separate section in the fee table must be included for the selling shareholders. That section lists the class(es) of securities registered and allocates a dollar amount to each class. The Item 507 disclosure is included in the prospectus at the time of effectiveness.

[75] 44 U.S.C. 3501–3520.

[76] Titles for the collecitons of information are: ''Securities Act Rule 155''; and ''Securities Act Rule 477''. We have requested OMB control numbers for rules 155 and 477.

[77] 44 U.S.C. 3506(c)(1)(B)(v).

[78] In this regard, we note that a private offerings issuers typically advise offerees of the legal consequences related to purchasing in an unregistered offering.

[79] Three hundred hours are atributable to the new registration statement disclosure, another 300 hours are attributable to the notification requirement in private offerings, and 1800 hours are attributable to disclosure in the private offering documents of changes in the issuer's business or financial condition that are material to the investment decision in the private offering.

[80] We used an estimated hourly rate of $175.00 to determine the estimated cost to the respondent of the disclosure prepared by outside counsel. We arrived at that hourly rate estimate after consulting with several private law firms.

filed with the Commission, will not be kept confidential. Responses to the collection of information with respect to Rule 155(c) will not be filed with the Commission.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the information collected pursuant to new Rule 155 and revised Rule 477 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 Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 with reference to File No. S7–30–98. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–30–98, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

## VII. Consideration of Costs and Benefits

As an aid to evaluate the costs and benefits of our proposals, we requested the views of the public and other supporting information. Commenters who addressed costs said that the proposed safe harbors for switching from private to registered offerings and vice versa would reduce costs,[81] noting particularly that companies would be able to consider investor interest before deciding to expend resources to conduct a registered offering.[82] The rules and amendments adopted today are designed to modernize and improve the Commission's regulatory system for offerings under the Securities Act, enhancing the efficiency of the offering process without diminishing investor protection.

The new rule and amendments will increase all issuers' flexibility to raise capital in different ways and will reduce the costs of raising capital because issuers will be able to adapt their financing plans more easily to prevailing market conditions. These benefits are difficult to quantify. Moreover, because the Commission generally does not regulate the private offering of securities, it is particularly difficult to estimate the impact of these rules. Rule 155(b) will allow an issuer that starts a private offering to switch to a registered offering if investor interest is substantial. Rule 155(c) will allow an issuer to abandon a registered offering, for example if investors show little interest, and instead proceed with a private offering. In either case, the issuer may be able to make the change more rapidly and with greater legal certainty than under current regulations and staff interpretations. Rule 155 will enable issuers more easily to avoid incurring the significant expense of filing a registration statement, only to discover later that a registered offering cannot be completed. This flexibility should be particularly beneficial to small business issuers, for whom the costs of a registered offering typically represent a greater proportion of resources and thus greater risk.

Satisfaction of each safe harbor's conditions will require issuers to incur modest additional costs to disclose information about the abandoned offering. For example, under Rule 155(b) there will be the cost of disclosure to include in each prospectus used in the registered offering specified information concerning the private offering and its abandonment. If the issuer seeks to file the registration statement sooner than 30 calendar days after termination of all offering activity in the private offering, further costs may be incurred to establish or obtain legal advice that securities were offered in the private offering only to persons who were (or who the issuer reasonably believes were) ''accredited'' or ''sophisticated.'' Under Rule 155(c), costs will be incurred to withdraw the registration statement before effectiveness and to provide each offeree in the private offering specified information regarding abandonment of the registered offering and legal consequences related to purchasing in an unregistered offering. In some cases, further costs may be incurred to disclose in any disclosure document used in the private offering any changes in the issuer's business or financial condition that occurred after the issuer filed the registration statement that are material to the investment decision in the private offering.

By making withdrawal of a registration statement before effectiveness automatic, the amendments to Rule 477 will facilitate reliance on Rule 155(c) by eliminating administrative delays that can result in increased costs to issuers. Together with the integration safe harbor of Rule 155(c), amended Rule 477 will allow issuers to access private markets more rapidly if an attempted registered offering is abandoned. If reliance on Rule 155(c) is anticipated, amended Rule 477 requires an issuer to incur modest additional costs to state that the issuer may undertake a subsequent private offering in reliance on that rule.

Under the amendments to Rule 457, the filing fee paid for a withdrawn registration statement will be available to the issuer for use with future registration statements for up to five years. This amendment further reduces the financial risk of an abandoned registered offering. Of the registration statements filed during the five-year period from January 1, 1995 to December 31, 1999, issuers withdrew 851 Securities Act registration statements. The aggregate filing fees paid for these 851 registration statements was $19,540,257. The average filing fee paid for each registration statement was $22,962; the median filing fee was $13,646.

The ability to offset filing fees associated with a withdrawn registration statement against filing fees due for a later registration statement on the terms provided by amended Rule 457 could represent substantial cost savings to qualifying issuers. A majority-owned subsidiary of the original registrant or a parent that owns more than 50 percent of the original registrant's voting securities will also be able to offset filing fees paid with respect to unsold securities against filing fees due for a later registration statement, resulting in additional potential cost savings.

Other amendments to Rule 457, codifying that no filing fee is required to register securities offered solely for market-making purposes by an affiliate and no separate filing fee is required to register a resale in tandem with the

[81] Letters of Investment Company Institute, national Venture Capital Association, and TIAA–CREF.

[82] Letter of National Venture Capital Association.

registered offering of securities for which a filing fee was paid, such as a business combination transaction, keep costs low and provide benefits. None of the amendments to Rule 457 will require an issuer to incur any new costs.

## VIII. Promotion of Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[83]

New Rule 155, as well as the amendments to Rules 429, 457 and 477, will enable issuers to decrease many of the costs of abandoned offerings and accelerate their ability to obtain financing in new offerings. This should promote efficiency and capital formation.

To the extent that the new and amended rules operate to lower the cost of raising capital in the United States, they should enhance the competitiveness of issuers that raise capital in U.S. capital markets. We believe that the new and amended rules, by reducing the financial risk of an abandoned registered offering, will reduce competitive disadvantages borne by small business issuers, for whom the costs of a registered offering typically represent a greater proportion of resources. The new rule and amendments make it easier for issuers to enter private markets after abandoning a registered offering, without sacrificing existing investor protections.

## IX. Final Regulatory Flexibility Analysis

We prepared this Final Regulatory Flexibility Analysis under 5 U.S.C. § 604 regarding the new rule and amendments adopted today.

### *A. Need for Rulemaking*

The purpose of Rule 155 and the amendments is to modernize, rationalize, and clarify the Commission's regulatory system for offerings under the Securities Act. In particular, Rule 155 is intended to provide greater certainty regarding the integration of private and registered offerings, and to facilitate changing an offering from private to registered (or vice versa), thereby promoting capital formation without diminishing investor protection.

[83] 15 U.S.C. 77b(b).

### *B. Significant Issues Raised by Public Comment*

We invited written comments on any aspect of the Initial Regulatory Flexibility Analysis, but received no specific comments in response to our request.

### *C. Small Entities Subject to the Rules*

Rule 155 and the amendments will affect small entities that are required to file registration statements under the Securities Act. For purposes of the Regulatory Flexibility Act, the Securities Act defines a ''small business'' issuer, other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less.[84]

We estimate that most of the 2,500 reporting companies with assets of $5 million or less are not investment companies. All of these companies would be able to rely on Rule 155 and the amended rules if they switched from a private offering to a registered offering, or vice versa. However, we have no reliable way to determine how many small businesses may switch from one kind of offering to another in the future, or may be affected otherwise by the new rule or the new amendments.

### *D. Reporting, Recordkeeping, and Other Compliance Requirements*

Rule 155 and the amendments modernize and clarify the regulatory system for offerings under the Securities Act. Small businesses will report and file essentially the same information as before. The amendments will increase all issuers' flexibility to raise capital in a number of ways. An issuer will be able to switch to a registered offering if investors show substantial interest in a private offering already commenced, and will be able to withdraw an unsuccessful registered offering more quickly than before, eliminating costly administrative delays.

Issuers will be able to convert more easily and with less regulatory uncertainty between registered and private offerings. In each case, the issuer will need to provide investors disclosure regarding abandonment of the prior offering. When an issuer withdraws a registration statement, the filing fee paid with respect to the unsold securities will be available to offset against the filing fee due for a future registration statement. In most cases, the withdrawal application, which will need to disclose the reason for withdrawing the registration statement, will become effective automatically. These changes should benefit small business issuers.

[84] *See* 17 CFR 230.157. When used regarding an issuer tht is an investment company, the term is defined as an investment company and any related investment company with aggregate netr assets of $50 million or less as of the end o its most recent fiscal year. *See* 17 CFR 270.0–10.

### *E. Agency Action To Minimize Effect on Small Entities*

The Regulatory Flexibility Act directs the Commission to consider alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small business issuers. In connection with the amendments, we considered several alternatives, including the following:

- Establishing different compliance and reporting requirements, or timetables that take into account the resources of small businesses;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small businesses;
- Using performance rather than design standards; and
- Exempting small businesses from all or part of the requirements.

Overall, the rule is designed to benefit all capital raising activity, by both small and large entities. The conditions imposed include disclosure designed to protect investors from any confusion in the event an entity changes how it raises money. These disclosure conditions are not resource intensive.

We did not propose or adopt all of the alternatives that we considered. Alternatives that we proposed but did not adopt include:

- In the private-to-registered safe harbor, the issuer filing any selling materials used in the private offering as part of the registration statement; and
- In the registered-to-private safe harbor, the issuer agreeing in writing to liability under the standards of Securities Act Sections 11 and 12(a)(2) for any material misstatements or omissions in the offering documents used in the private offering.

These alternatives were not adopted because commenters stated that they would be costly and burdensome to issuers.

In some instances, the alternatives that we chose not to propose or adopt—for example exempting small issuers from the disclosure requirements—would be inconsistent with our statutory mandate under the Securities Act to require full and fair disclosure of all material information to investors. We believe that the amendments should apply equally to all entities required to disclose information, in order to safeguard protection of all investors.

We also believe that there would be no benefit in providing separate requirements for small business issuers based on the use of performance rather than design standards. The five-factor test,[85] which continues to apply, already provides a performance standard to resolve the question of integration. The design standards adopted in Rule 155 allow an issuer to switch between private and registered offerings more quickly and with greater certainty than under the five-factor test. Moreover, we already have provided a separate Integrated Disclosure System for Small Business Issuers[86] to simplify the registration requirements for small entities. Registered offerings filed under this system will be treated the same as any other registered offering for purposes of Rule 155.

## X. Statutory Basis and Text of Amendments

Securities Act Rule 155 and the amendments to Securities Act Rules 152, 429, 459 and 477 are adopted pursuant to the authority set forth in Sections 2(b), 6, 7, 8, 10, 19(a), and 28 of the Securities Act, as amended.

## List of Subjects in 17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

## Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising the general authority citation for Part 230 to read as follows:

**Authority:** 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. By adding § 230.155 to read as follows:

### § 230.155 Integration of abandoned offerings.

*Preliminary Note:* Compliance with paragraph (b) or (c) of this section provides a non-exclusive safe harbor from integration of private and registered offerings. Because of the objectives of Rule 155 and the policies underlying the Act, Rule 155 is not available to any issuer for any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.

(a) *Definition of terms.* For the purposes of this section only, a *private offering* means an unregistered offering of securities that is exempt from registration under Section 4(2) or 4(6) of the Act (15 U.S.C. 77d(2) and 77d(6)) or Rule 506 of Regulation D (§ 230.506).

(b) *Abandoned private offering followed by a registered offering.* A private offering of securities will not be considered part of an offering for which the issuer later files a registration statement if:

(1) No securities were sold in the private offering;

(2) The issuer and any person(s) acting on its behalf terminate all offering activity in the private offering before the issuer files the registration statement;

(3) The Section 10(a) final prospectus and any Section 10 preliminary prospectus used in the registered offering disclose information about the abandoned private offering, including:

(i) The size and nature of the private offering;

(ii) The date on which the issuer abandoned the private offering;

(iii) That any offers to buy or indications of interest given in the private offering were rejected or otherwise not accepted; and

(iv) That the prospectus delivered in the registered offering supersedes any offering materials used in the private offering; and

(4) The issuer does not file the registration statement until at least 30 calendar days after termination of all offering activity in the private offering, unless the issuer and any person acting on its behalf offered securities in the private offering only to persons who were (or who the issuer reasonably believes were):

(i) Accredited investors (as that term is defined in § 230.501(a)); or

(ii) Persons who satisfy the knowledge and experience standard of § 230.506(b)(2)(ii).

(c) *Abandoned registered offering followed by a private offering.* An offering for which the issuer filed a registration statement will not be considered part of a later commenced private offering if:

(1) No securities were sold in the registered offering;

(2) The issuer withdraws the registration statement under § 230.477;

(3) Neither the issuer nor any person acting on the issuer's behalf commences the private offering earlier than 30 calendar days after the effective date of withdrawal of the registration statement under § 230.477;

(4) The issuer notifies each offeree in the private offering that:

(i) The offering is not registered under the Act;

(ii) The securities will be ''restricted securities'' (as that term is defined in § 230.144(a)(3)) and may not be resold unless they are registered under the Act or an exemption from registration is available;

(iii) Purchasers in the private offering do not have the protection of Section 11 of the Act (15 U.S.C. 77k); and

(iv) A registration statement for the abandoned offering was filed and withdrawn, specifying the effective date of the withdrawal; and

(5) Any disclosure document used in the private offering discloses any changes in the issuer's business or financial condition that occurred after the issuer filed the registration statement that are material to the investment decision in the private offering.

3. By revising § 230.429 to read as follows:

### § 230.429 Prospectus relating to several registration statements.

(a) Where a registrant has filed two or more registration statements, it may file a single prospectus in the latest registration statement in order to satisfy the requirements of the Act and the rules and regulations thereunder for that offering and any other offering(s) registered on the earlier registration statement(s). The combined prospectus in the latest registration statement must include all of the information that currently would be required in a prospectus relating to all offering(s) that it covers. The combined prospectus may be filed as part of the initial filing of the latest registration statement, in a pre-effective amendment to it or in a post-effective amendment to it.

(b) Where a registrant relies on paragraph (a) of this section, the registration statement containing the combined prospectus shall act, upon effectiveness, as a post-effective amendment to any earlier registration statement whose prospectus has been combined in the latest registration statement. The registrant must identify any earlier registration statement to which the combined prospectus relates by setting forth the Commission file number at the bottom of the facing page of the latest registration statement.

4. By amending § 230.457 by adding paragraphs (f)(5), (p) and (q) and revising the first sentence of paragraph (o) to read as follows:

### § 230.457 Computation of fee.

* * * * *

[85] *See* n. 20, above.

[86] Regulation S–B, 17 CFR 228.10, *et seq.*

(f) * * *

(5) If a filing fee is paid under this paragraph for the registration of an offering and the registration statement also covers the resale of such securities, no additional filing fee is required to be paid for the resale transaction.

* * * * *

(o) Where an issuer registers an offering of securities, the registration fee may be calculated on the basis of the maximum aggregate offering price of all the securities listed in the ''Calculation of Registration Fee'' table. * * *

(p) Where all or a portion of the securities offered under a registration statement remain unsold after the offering's completion or termination, or withdrawal of the registration statement, the aggregate total dollar amount of the filing fee associated with those unsold securities (whether computed under § 230.457(a) or (o)) may be offset against the total filing fee due for a subsequent registration statement or registration statements. The subsequent registration statement(s) must be filed within five years of the initial filing date of the earlier registration statement, and must be filed by the same registrant (including a successor within the meaning of § 230.405), a majority-owned subsidiary of that registrant, or a parent that owns more than 50 percent of the registrant's outstanding voting securities. A note should be added to the ''Calculation of Registration Fee'' table in the subsequent registration statement(s) stating the dollar amount of the filing fee previously paid that is offset against the currently due filing fee, the file number of the earlier registration statement from which the filing fee is offset, and the name of the registrant and the initial filing date of that earlier registration statement.

(q) Notwithstanding any other provisions of this section, no filing fee is required for the registration of an indeterminate amount of securities to be offered solely for market-making purposes by an affiliate of the registrant.

5. By amending § 230.477 by adding a sentence at the end of paragraph (b); by revising paragraph (c); and by adding paragraph (d) to read as follows:

**§ 230.477 Withdrawal of registration statement or amendment.**

* * * * *

(b) * * * Any other application for withdrawal of an entire registration statement made before the effective date of the registration statement will be deemed granted at the time the application is filed with the Commission unless, within 15 calendar days after the registrant files the application, the Commission notifies the registrant that the application for withdrawal will not be granted.

(c) The registrant must sign any application for withdrawal and must state fully in it the grounds on which the registrant makes the application. The fee paid upon the filing of the registration statement will not be refunded to the registrant. The registrant must state in the application that no securities were sold in connection with the offering. If the registrant applies for withdrawal in anticipation of reliance on § 230.155(c), the registrant must, without discussing any terms of the private offering, state in the application that the registrant may undertake a subsequent private offering in reliance on § 230.155(c).

(d) Any withdrawn document will remain in the Commission's public files, as well as the related request for withdrawal.

Dated: January 26, 2001.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2847 Filed 2–2–01; 8:45 am]

BILLING CODE 8010–01–P

---

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 903

**[Docket No. FR–4420–F–11]**

**RIN 2577–AB89**

## Rule To Deconcentrate Poverty and Promote Integration in Public Housing; Change in Applicability Date of Deconcentration Component of PHA Plan

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule; amendment.

**SUMMARY:** This final rule amends HUD's December 22, 2000 final rule revising the deconcentration provisions of its Public Housing Agency (PHA) Plan regulations. Specifically, the final rule provides that the December 22, 2000 amendments concerning the deconcentration component of a PHA's admission policy are applicable to PHAs with fiscal years commencing on and after October 1, 2001.

**DATES:** *Effective Date:* March 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free telephone number). Persons with hearing or speech disabilities may access this number via TTY by calling the free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 22, 2000 (65 FR 81214), HUD published a final rule to amend the deconcentration provisions of its October 21, 1999 Public Housing Agency (PHA) Plan final rule. The December 22, 2000 final rule followed publication of an April 17, 2000 proposed rule.

The December 22, 2000 final rule provides that the first PHA fiscal year that is covered by the new requirements is the PHA fiscal year that begins July 2001 (see § 903.5). Upon further consideration, HUD believes that the July 1, 2001 date may not provide PHAs with sufficient time to bring their practices into compliance with the new deconcentration requirements. Accordingly, this final rule provides that the December 22, 2000 amendments concerning the deconcentration component of a PHA's admission policy are applicable to PHAs with fiscal years commencing on and after October 1, 2001.

### II. Justification for Issuance of Rule for Effect

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. Public procedure is unnecessary because this rule makes a technical change to 24 CFR part 903 regarding the first PHA fiscal year covered by the deconcentration-related amendments of HUD's December 22, 2000 final rule to allow PHAs more time to comply with this requirement. The amendment will benefit PHAs, the residents they serve and the public by assuring that PHAs have sufficient time to become familiar with the requirements of the December 22, 2000 final rule and to bring their practices into compliance with the new deconcentration procedures.

## III. Findings and Certifications

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes a technical amendment to 24 CFR part 903 regarding the first PHA fiscal year covered by the deconcentration-related amendments of HUD's December 22, 2000 final rule.

*Environmental Impact*

This rule is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1). This rule only makes a technical amendment to an existing regulation.

*Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 13132, *Federalism,* has determined that this rule does not impose substantial direct compliance costs on States or local governments or preempt State law within the meaning of the Executive Order. As a result, the rule is not subject to review under the order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

**List of Subjects in 24 CFR Part 903**

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD amends 24 CFR part 903 as follows:

## PART 903—PUBLIC HOUSING AGENCY PLANS

1. The authority citation for part 903 continues to read as follows:

**Authority:** 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

2. Revise § 903.5(a)(1), (a)(4), and (b)(1) to read as follows:

**§ 903.5 When must a PHA submit the plans to HUD?**

(a) *5-Year Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part as amended on December 22, 2000, is the PHA fiscal year that begins October 2001. This 5-Year Plan submitted by a PHA must be submitted for the 5-year period beginning October 1, 2001.

* * * * *

(4) PHAs may choose to update their 5-Year Plans every year as good management practice and must update their 5-Year Plans that were submitted for PHA fiscal years beginning before October 1, 2001, to comply with the requirements of this part as amended on December 22, 2000, at the time they submit their next Annual Plan for fiscal years beginning on or after October 1, 2001. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans. (Substantial deviation is determined by the PHA in accordance with criteria provided by the PHA in its Annual Plan in accordance with § 903.7(r).)

* * * * *

(b) *The Annual Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part as amended on December 22, 2000 is the PHA fiscal year that begins October 1, 2001.

* * * * *

Dated: January 29, 2001.

**Mel Martinez,**

*Secretary.*

[FR Doc. 01–2912 Filed 2–2–01; 8:45 am]

BILLING CODE 4210–32–P

---

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Part 103

**RIN 1076–AD73**

## Loan Guaranty, Insurance, and Interest Subsidy: Delay of Effective Date

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' 66 Fed. Reg. 7701 (Jan. 24, 2001), this document temporarily delays for 60 days the effective date of the rule entitled Loan Guaranty, Insurance, and Interest Subsidy, published in the **Federal Register** on January 17, 2001, at 66 FR 3861. That rule concerns implementation of the Bureau's Loan Guaranty, Insurance, and Interest Subsidy Program to guarantee or insure loans made by private lenders to individual Indians and to organizations of Indians, and to assist qualified borrowers with a portion of their interest payments.

**DATES:** The effective date of the Loan Guaranty, Insurance, and Interest Subsidy rule, amending 25 CFR part 103, published in the **Federal Register** on January 17, 2001, at 66 FR 3861, is delayed for 60 days, from February 16, 2001 to a new effective date of April 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** David B. Johnson, Division of Indian Affairs, Office of the Solicitor, 202–208–3401.

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. section 553 applies to this action, the action is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. sections 553(b)(3)(B) and 553(d)(3), in that seeking public comment is impractical, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

Dated: January 31, 2001.

**Timothy S. Elliott,**

*Acting Deputy Solicitor.*

[FR Doc. 01–2964 Filed 2–2–01; 8:45 am]

BILLING CODE 4310–02–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### 25 CFR Part 151

**RIN 1076–AD90**

### Acquisition of Title to Land in Trust: Delay of Effective Date

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' 66 FR 7701 (Jan. 24, 2001), this document temporarily delays for 60 days the effective date of the rule entitled Acquisition of Title to Land in Trust, published in the **Federal Register** on January 16, 2001, at 66 FR 3452. That rule concerns procedures used by Indian tribes and individuals to ask the Secretary of the Interior to acquire title to land into trust and criteria used to determine whether to accept land to be held in trust.

**DATES:** The effective date of the Acquisition of Title to Land in Trust rule, amending 25 CFR part 151, published in the **Federal Register** on January 16, 2001, at 66 FR 3452, is delayed for 60 days, from January 16, 2001 to a new effective date of March 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Terry Virden, Director, Office of Trust Responsibilities, Mail Stop: 4513–MIB, 1849 ''C'' Street NW., Washington, DC 20240; telephone: 202–208–5831; electronic mail: *TerryVirden@BIA.GOV*

**SUPPLEMENTARY INFORMATION:** The Department's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. sections 553(b)(3)(B) and 553(d)(3), in that seeking public comment is impractical, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

Dated: January 31, 2001.

**Timothy S. Elliott,**

*Acting Deputy Solicitor.*

[FR Doc. 01–2963 Filed 2–2–01; 8:45 am]

BILLING CODE 4310–02–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 294

**RIN 0596–AB77**

### Special Areas; Roadless Area Conservation: Delay of Effective Date

**AGENCY:** Forest Service, Department of Agriculture.

**ACTION:** Final rule; Delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled Special Areas; Roadless Area Conservation, published in the **Federal Register** on January 12, 2001, 66 FR 3244. That rule concerns the establishment of prohibitions on road construction, road reconstruction, and timber harvesting in inventoried roadless areas on National Forest System lands. To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule effective immediately upon publication.

**DATES:** The effective date of the Special Areas; Roadless Area Conservation, published in the **Federal Register** on January 12, 2001, at 66 FR 3244, is delayed for 60 days, from March 13, 2001 to a new effective date of May 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090–6090, telephone (703) 605–4533.

Dated: January 29, 2001.

**Ann M. Veneman,**

*Secretary.*

[FR Doc. 01–2869 Filed 2–2–01; 8:45 am]

BILLING CODE 3410–11–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

**[PR Docket No. 92–235; FCC 00–439]**

### Replacement of Part 90 by Part 88 To Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petitions for reconsideration.

**SUMMARY:** This document disposes of seven petitions for reconsideration or clarification and one comment submitted in response to the Commission's Final rule. The Commission accepts a compromise frequency coordination plan, thus disposing of two petitions and facilitating the frequency coordination process. Petitions seeking other relief are granted, granted in part, dismissed or denied, thereby to provide further protection to safety related communications of Private Land Mobile Radio (PLMR) licensees while still maintaining the spectrum efficiency achieved through the sharing of PLMR frequencies among multiple users.

**DATES:** Effective March 7, 2001 except for §§ 90.35(b)(2)(iii) and 90.175(b)(1) which contain information collection that has not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections and that paragraph. Written comments by the public on new and/or modified information collections are due April 6,

2001. OMB must submit written comments on the information collection on or before June 5, 2001.

**ADDRESSES:** In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1—C804, 445 12th Street, SW., Washington, DC 20554, email jboley@fcc.gov.

**FOR FURTHER INFORMATION, CONTACT:** Michael J. Wilhelm, 445 12th Street, SW., Room 4C305, Washington, DC 20554; telephone 202.418.0680; email mwilhelm @ fcc.gov. For further information on the information collection(s) contact Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, email jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Fifth Memorandum Opinion and Order* (Fifth MO&O) in WT Docket 92–225 released December 29, 2000. The complete text of this *Fifth MO&O* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC 20554; and also is available from the Commission's copying contractor, International Transcription Services (ITS, Inc.) Courtyard Level, 445 12th Street, SW., Washington, DC 20554. The *Fifth MO&O* addressed seven petitions for reconsideration and one comment, all directed to the rules established by the Commission's Second Report and Order (Second R&O) 62 FR 18834 4/17/97 in this proceeding.

1. In petitions for reconsideration, the Forest Industries Telecommunications (FIT) and the Manufacturers Radio Frequency Advisory Council (MRFAC) opposed earlier-adopted rules that gave licensees and applicants for former Power, Petroleum, and Railroad frequencies special treatment in the frequency coordination process whereby licensees are assigned particular radio channels. After the FIT and MRFAC petitions had been filed, the Land Mobile Communications Council (LMCC) filed a comment containing a compromise frequency coordination plan that was satisfactory to LMCC members, including FIT and MRFAC. Accordingly, the Commission adopted the substance of the LMCC plan and devised implementing rule provisions. Additionally, the Commission directed frequency coordinators to reach consensus on the standards to be used to assess co-channel and adjacent channel interference and to report the results of their consensus findings to the Commission.

2. Although the Commission favors narrowband radio equipment because it conserves valuable spectrum, there are instances in which wideband equipment of particular designs may also be spectrum efficient. In the *Second R&O*, the Commission said that it would consider waiver requests from potential licensees who wanted to use spectrum-efficient wideband equipment. In its petition for reconsideration, MRFAC suggested that evaluation of such waiver requests should be done by frequency coordinators. The Commission disagreed, pointing out that there were public interest considerations inherent in such waiver requests and that the Commission is best equipped to evaluate matters related to the public interest.

3. In its petition for reconsideration, Dataradio claimed that a low power channel plan submitted by the LMCC allowed secondary voice transmissions on data channels. It argued that such voice transmissions would result in harmful interference to data transmissions. The Commission dismissed Dataradio's claim as premature because the LMCC plan dealing with reserved data channels had not been accepted by the Commission and thus was not ripe for reconsideration.

4. The Alarm Industry Communications Committee and a law firm filed petitions for clarification asking the Commission to confirm that the *Second R&O* rule that deleted the requirement that low power stations be licensed as mobiles, did not mean that the applications for such stations had to contain geographical coordinates and other information typically required of fixed stations. The Commission confirmed that was the case and reiterated that licensees of such stations can place transmitters anywhere within a defined service area by specifying a central location and a radius extending therefrom.

5. In its petition for reconsideration, UTC claimed that the Commission had failed to provide frequency coordination protection from adjacent channel interference. The Commission stated that UTC was mistaken and that it had been clear in the *Second R&O* that frequency coordinators should take adjacent channel interference into account in the frequency coordination process.

6. The Hewlett Packard Corporation petition for reconsideration requested a negotiated rulemaking or other process to adopt rules that would protect medical telemetry operations. The Commission denied the petition because, since submission of the petition for reconsideration, other measures to protect medical telemetry had been adopted.

7. In its petition for reconsideration, Com Net Ericsson requested certain modifications or deletions to the Commission's rules regulating trunked operation of radio facilities. The Com Net Ericsson request was dismissed because the Commission had already made the requested changes in connection with a related proceeding.

**Final Regulatory Flexibility Analysis**

8. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rule Making* and the *Further Notice of Proposed Rule Making* in PR Docket 92–235.[1] The Commission sought written public comment on the rule making proposals in the *Refarming Notice* and *Further Notice*, including on the respective IRFAs. This present Final Regulatory Flexibility Analysis (Final FRFA) in this *Fifth MO&O* conforms to the RFA.[2]

(1) Need For, and Objectives of This Action

9. Our objective is to increase spectrum efficiency and facilitate the introduction of advanced technologies

[1] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket 92–235, *Notice of Proposed Rule Making*, 57 FR 54034 11/16/92, 7 FCC Rcd 8105, 8133 (1992) (*Refarming Notice*). Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Radio Services, PR Docket No. 92–235, *Report and Order and Further Notice of Proposed Rule Making*, 60 FR 37152 7/19/95, 10 FCC Rcd 10076, 10177 (1995) (*Report and Order or Further Notice*). A Final Regulatory Flexibility Analysis was provided in the first *Memorandum Opinion and Order*, Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket 92–235, *Memorandum Opinion and Order*, 62 FR 2027 1/15/97, 11 FCC Rcd. 17676, 17718 (1996). An additional Final Regulatory Flexibility Analysis was furnished in connection with the *Second Report and Order*, Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket 92–235, *Second Report and Order*, 62 FR 18834 4/17/97, 12 FCC Rcd 14307, 14353 (1997). A Supplemental Final Regulatory Flexibility was provided in the *Second Memorandum Opinion and Order*, Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket 92–235, *Second Memorandum Opinion and Order*, 64 FR 36258 7/6/99 14 FCC Rcd. 8642, 8673 (1999).

[2] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

into the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz private land mobile radio (PLMR) bands. The *Report and Order* in this proceeding modified the Commission's rules to resolve many of the technical issues which inhibited the use of spectrally efficient technologies in these frequency bands. It also stated the Commission's intent to consolidate the twenty existing radio service pools. The *Further Notice* in this proceeding proposed several methods of introducing market based incentives into the PLMR bands, including exclusivity. In the *Second R&O*, the Commission consolidated the radio service frequency pools and addressed related issues such as frequency coordination, trunking, and low power frequencies. The *Second MO&O* addressed petitions for reconsideration and clarification received in response to the *Second R&O.* The *Third MO&O* established rules for trunking and terminated the exclusivity portion of the proceeding. The *Fourth MO&O* stayed the effect of the new coordination rules. This *Fifth MO&O* addresses petitions for reconsideration or clarification of the *Second MO&O* and establishes new frequency coordination rules.

10. The Commission finds that the potential benefits to the Private Land Mobile Radio (PLMR) community from the promulgation of rules for this purpose exceed any negative effects that may result. Thus, the Commission concludes that the public interest is served by modifying our rules.

(2) Summary of Significant Issues Raised by the Public in Response to the Previous Final Regulatory Flexibility Analyses

11. No reconsideration petitions were submitted in direct response to the previous FRFAs. The Commission has, however, reviewed general comments that may impact small businesses. Much of the impact on small businesses arises from the central decision in this proceeding—determining the number of frequency pools and the eligibility criteria for each pool. This affects small businesses in the following way. A smaller number of pools provides a greater number of frequencies available for small businesses that use PLMR systems to meet their coordination needs. Additionally, by creating fewer pools, frequency coordinators will now be subject to competition. Thus, small businesses that use PLMR systems can expect to pay lower prices for frequency coordination while receiving equivalent or better service. An additional impact on small business may result from the new frequency coordination rules which may marginally increase the cost of frequency coordination.

(3) Description and Estimate of the Number of Small Entities Subject to Which the Rules Apply

12. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [6] Nationwide, as of 1992, there were approximately 275,801 small organizations.[7] ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' [8] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[9] This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[10] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

13. Estimates for PLMR Licensees: Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed, nor would it be possible to develop, a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the Small Business Administration (SBA), each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.[11] Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

14. Estimates for Frequency Coordinators: Neither the Commission nor the SBA have developed a definition of small entities specifically applicable to frequency coordinators. Therefore, the Commission concluded that the closest applicable definition under SBA rules is Business Associations (SIC 8611).[12] The SBA defines a small business association as an entity with $5.0 million or less in annual receipts. There are 19 entities certified to perform frequency coordination functions under Part 90 of our Rules. However, the Commission is unable to ascertain how many of these frequency coordinators are classified as small entities under the SBA definition. The Census Bureau indicates that 97% of business associations have annual receipts of $4.999 million or less and would be classified as small entities. The Census Bureau category is very broad, and does not include specific figures for firms that are engaged in frequency coordination. Therefore, for the purposes of this Final FRFA, the Commission estimates that almost all of the 18 spectrum frequency coordinators are small as defined by the SBA.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rules.

15. This *Fifth MO&O* requires frequency coordinators to arrive at consensus standards for co-channel and adjacent channel interference and to report these standards to the Commission. This represents a one-time

[3] *See* 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[5] Small Business Act, 5 U.S.C. 632 (1996).

[6] 5 U.S.C. 601(4).

[7] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the Small Business Administration).

[8] 5 U.S.C. 601(5).

[9] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[10] *Id.*

[11] See Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120–121.

[12] *See Second R&O* at 14355.

effort on the part of the frequency coordinators. The Commission believes that participation in the consensus process will be highly variable from one coordinator to another. However, on the average, the Commission anticipates that activities associated with reaching consensus and the preparation of the requisite report will occupy 40 hours of time per coordinator, of which there are 19.

(5) Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

16. The Commission, in this *Fifth MO&O,* has considered petitions for reconsideration and clarification regarding its *Second R&O* in PR Docket No. 92–235, which consolidated the PLMR radio services below 512 MHz and, *inter alia*, made provisions regarding frequency coordination in the Industrial/Business Pool. In doing so, the Commission has adopted a proposal which minimizes the burdens placed on small businesses. The new frequency coordination procedure, grounded, in part on comments representative of industry consensus, allows the applicants some choice in selecting a frequency coordinator, thereby introducing competition and reducing costs; but, in order to minimize potential interference, concurrence of another coordinator may be required in some instances. This *Fifth MO&O* also requires frequency coordinators to provide a consensus report to the Commission concerning standards for co-channel and adjacent channel interference. Although some initial burden thus rests on the coordinators in preparation of the report, the net effect will be to reduce the overall burden associated with the frequency coordination process inasmuch as there will likely be no significant further disputes among coordinators, with associated workload, concerning the appropriate standard to use when conducting an interference analysis.

**Report to Congress**

17. The Commission will send a copy of this *Fifth MO&O* including this Final FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Fifth MO&O*, including Final FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Fifth MO&O* and Final FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

**Paperwork Reduction Act Analysis**

18. This Memorandum Opinion and Order contains a new information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Memorandum Opinion and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due April 6, 2001. Comments should address: (a) whether the new 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 estimates; (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.

*OMB Control Number:* 3060–XXXX.

*Title:* Section 90.35 Industrial/Business Pool & 90.175 Frequency Coordination Requirements.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, State, Local, or Tribal Governments.

*Number of Respondents:* 3800 respondents.

*Estimated Time per Response:* 1 hour per response.

*Total Annual Burden:* 3800 hours.

*Cost to Respondents:* No annual cost burden on respondents from either capital or start-up costs.

*Needs and Uses:* The information collected from proposed and existing licensees will be used to facilitate the frequency coordination process and to protect existing stations against harmful interference. The requested information is needed to improve the frequency coordination process with a resultant improvement in efficient use of the spectrum.

*OMB Control Number:* 3060-XXXX.

*Title:* Report on Co-Channel and Adjacent Channel Interference Report.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit, not-for-profit institutions.

*Number of Respondents:* 19 respondents.

*Estimated Time per Response:* 40 hours.

*Total Annual Burden:* 760 hours.

*Cost to Respondents:* No annual cost burden on respondents from either capital or start-up costs.

*Needs and Uses:* The information collected from frequency coordinators will be used to establish a uniform calculus for estimation of co-channel and adjacent channel interference from proposed stations to existing Public Land Mobile Radio Service stations. The requested information is needed to improve the frequency coordination process with a resultant improvement in efficient use of the spectrum.

**List of Subjects in 47 CFR Part 90**

Communications, Private Land Mobile Radio Services.

Federal Communications Commission.

**William F. Caton,**

*Deputy, Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 90 as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

**Authority:** Secs. 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.35 is amended by redesignating paragraph (b)(2)(iii) as paragraph (b)(2)(iv) and adding a new paragraph (b)(2)(iii) and revising paragraph (b)(2)(ii) to read as follows:

**§ 90.35 Industrial/business pool.**

* * * * *

(b) * * *

(2) * * *

(i) * * *

(ii) A letter symbol in the Coordinator column of the frequency table in paragraph (b)(3) of this section designates the mandatory certified frequency coordinator for the associated frequency in the table. However, any coordinator certified in the Industrial/Business Pool may coordinate applications on such frequencies provided the prior written consent of the designated coordinator is obtained. Frequencies for which two coordinators are listed may be coordinated by either of the listed coordinators.

(iii) Applications for new or modified facilities on frequencies shared prior to radio service consolidation by the former Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service and the Automobile Emergency Radio Service may be coordinated by any certified Industrial/Business Pool

coordinator. However, in the event that the interference contour of a proposed station would overlap the service contour of an existing station licensed on one of these previously shared frequencies, the written concurrence of the coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station, shall be obtained. For the purposes of this § 90.35, the service contour for UHF stations is the 39 dBu contour; and the interference contour for UHF stations is the 21 dBu contour; the service contour for VHF stations is the 37 dBu contour; and the interference contour for VHF stations is the 19 dBu contour.

* * * * *

3. Section 90.175 is amended by revising paragraphs (b)(1), (b)(2), and (b)(3) to read as follows:

**§ 90.175 Frequency coordination requirements.**

* * * * *

(b) * * *

(1) A statement is required from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(b) recommending the most appropriate frequency. In addition, if the interference contour of a proposed station would overlap the service contour of a station on a frequency formerly shared prior to radio service consolidation by licensees in the Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service or the Automobile Emergency Radio Service, the written concurrence of the coordinator for the industry-specific service, or the written concurrence of the licensee itself, must be obtained. Requests for concurrence must be responded to within 20 days of receipt of the request. The written request for concurrence shall advise the receiving party of the maximum 20 day response period. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain and other factors which may serve to minimize potential interference. In addition:

(2) On frequencies designated for coordination or concurrence by a specific frequency coordinator as specified in §§ 90.20(c)(3) and 90.35(b), the applicable frequency coordinator shall provide a written supporting statement in instances in which coordination or concurrence is denied. The supporting statement shall contain sufficient detail to permit discernment of the technical basis for the denial of concurrence. Concurrence may be denied only when a grant of the underlying application would have a demonstrable, material, adverse effect on safety.

(3) In instances in which a frequency coordinator determines that an applicant's requested frequency or the most appropriate frequency is one designated for coordination or concurrence by a specific frequency coordinator as specified in §§ 90.20(c)(3) or 90.35(b), that frequency coordinator may forward the application directly to the appropriate frequency coordinator. A frequency coordinator may only forward an application as specified above if consent is received from the applicant.

[FR Doc. 01–2870 Filed 2–2–01; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 991210332–0212–02; I.D. 122700B]**

**RIN 0648–AO95**

## Atlantic Highly Migratory Species (HMS) Fisheries; Regulatory Adjustments

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** NMFS amends the final regulations governing the Atlantic HMS fisheries to clarify the annual quota for blue sharks, to revise a cross-reference for shark size limits, and to revise the specifications for the East Florida Coast and Charleston Bump closed areas as intended by the recent final rule to minimize bycatch and incidental catch in the pelagic longline fishery.

**DATES:** Effective January 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz at 301-713-2347, FAX: 301–713–1917.

**SUPPLEMENTARY INFORMATION:** On May 28, 1999, NMFS published a final rule (64 FR 29090) that implemented, among other things, the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan (HMS FMP), which was adopted by the agency in April 1999. The final consolidated rule included language specifying the semiannual blue shark quota but inadvertently omitted language specifying the annual blue shark quota. The final consolidated rule also incorrectly cross-referenced the shark minimum size limit that is specified in the HMS FMP.

Additionally, on August 1, 2000, NMFS published a final rule (65 FR 47214) that prohibited pelagic longline fishing at certain times and in certain areas within the Exclusive Economic Zone (EEZ) of the Atlantic Ocean off the coast of the Southeastern United States and in the Gulf of Mexico. In that final rule, the definitions for the East Florida Coast and Charleston Bump closed areas inadvertently specified parts of the Atlantic Ocean outside the U.S. EEZ. As noted throughout the record for the final rule, the agency intended the restrictions to apply only in the U.S. EEZ. This technical amendment corrects these errors in the regulatory text and does not change the intent of the final rule. Due to the respecification of the referenced closed areas and the need for NMFS to distribute this information to affected fishermen and State and Federal enforcement personnel, NMFS postpones initiation of those time/area closures until March 1, 2001.

### Classification

The Assistant Administrator for Fisheries (AA), under 5 U.S.C. 553(b)(B), finds that providing prior notice and opportunity for public comment on this final rule is unnecessary and contrary to the public interest. This final rule corrects earlier rules by clarifying regulatory text inconsistent with the final HMS FMP and the Final Supplemental Environmental Impact Statement for the regulatory amendment reducing bycatch, bycatch mortality, and incidental catch in the Atlantic pelagic longline fishery. These corrections and clarifications are necessary to avoid adverse impacts on fishery participants that would result from inconsistent interpretations of the regulations relative to these regulations and/or the inability of NMFS to enforce regulations due to lack of clarity. For similar reasons, the AA, under 5 U.S.C. 553(d)(3), finds that delaying the effective date of this final rule for 30 days is unnecessary and contrary to the public interest.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. This action is

not significant under the meaning of Executive Order 12866.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: January 30, 2001

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, the definitions of ''Charleston Bump closed area'' and ''East Florida Coast closed area'' are revised to read as follows:

**§ 635.2 Definitions.**

* * * * *

*Charleston Bump closed area* means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 34°00' N. lat. near Wilmington Beach, NC, and proceeding due east to connect by straight lines the following coordinates in the order stated: 34°00' N. lat., 76°00' W. long.; 31°00' N. lat., 76°00' W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 31°00' N. lat. near Jekyll Island, GA.

* * * * *

*East Florida Coast closed area* means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 31°00' N. lat. near Jekyll Island, GA, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00' N. lat., 78°00' W. long.; 28°17' N. lat., 79°12' W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00' N. lat.; then proceeding due west to the following coordinates: 24°00' N. lat., 81°47' W. long.; then proceeding due north to intersect the inner boundary of the U.S. EEZ at 81°47' W. long. near Key West, FL.

* * * * *

3. In § 635.21, paragraphs (c)(2)(ii) and (iii) are revised to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

* * * * *

(c) * * *

(2) * * *

(ii) In the Charleston Bump closed area from March 1 through April 30, 2001, and from February 1 through April 30 each calendar year thereafter;

(iii) In the East Florida Coast closed area at any time beginning at 12:01 a.m. on March 1, 2001; and

* * * * *

4. In § 635.22, the first sentence of paragraph (c) is revised to read as follows:

**§ 635.22 Recreational retention limits.**

* * * * *

(c) *Sharks*. One shark from either the large coastal, small coastal or pelagic group may be retained per vessel per trip, subject to the size limits described in §635.20(e), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. * * *

* * * * *

5. In § 635.27, paragraph (b)(1)(iii) is revised to read as follows:

**§ 6355.27 Quotas.**

* * * * *

(b) * * *

(1) * * *

(iii) *Pelagic sharks*. The annual commercial quotas for pelagic sharks are 92 mt dw for porbeagle sharks, 273 mt dw for blue sharks, and 488 mt dw for pelagic sharks other than porbeagle or blue sharks (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(iv) of this section). These quotas are divided between two semiannual periods, January 1 through June 30, and July 1 through December 31. The quotas for each semiannual period are as follows:

(A) Porbeagle shark–46 mt dw.

(B) Blue sharks–136.5 mt dw.

(C) Pelagic sharks, other than porbeagle or blue sharks–244 mt dw.

* * * * *

[FR Doc. 01–2957 Filed 1–31–01; 3:33 pm]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 991228355-0370-04; I.D. 101200F]**

**RIN 0648-AM50**

## Fisheries of the Northeastern United States; 2001 Fishing Quotas for Atlantic Surf Clams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

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

**ACTION:** Final rule; 2001 fishing quotas for Atlantic surf clams, ocean quahogs, and Maine mahogany ocean quahogs.

**SUMMARY:** NMFS issues final quotas for the Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2001. The intent of this action is to specify allowable harvest levels of Atlantic surf clams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from the waters north of 43°50'N. lat. in 2001.

**DATES:** Effective from February 5, 2001, through December 31, 2001.

**ADDRESSES:** Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and the Essential Fish Habitat Assessment, are available from the Regional Administrator, Northeast Region. The EA/RIR/FRFA is accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm.*

**FOR FURTHER INFORMATION CONTACT:** Jennifer L. Anderson, Fishery Management Specialist, 978-281-9226.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow fishing to continue at that level for at least 10 years for surf clams

and for 30 years for ocean quahogs. While staying within this constraint, the Council policy is to also consider the economic benefits of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine mahogany ocean quahogs to the management unit and provide that a small artisanal fishery for ocean quahogs in the waters north of 43° 50′ N. lat. will have an annual quota with an initial amount of 100,000 Maine bushels (bu) (35,240 hectoliters (hL)) within a range of 17,000 to 100,000 Maine bu (5,991 hL to 35,240 hL). As specified in Amendment 10 to the FMP, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

Detailed background information regarding the development of these quotas was provided in the preamble to the proposed rule published at 65 FR 66960, November 8, 2000, and is not repeated here. The comment period for that rule ended on December 8, 2000. No comments were received, and the final quotas for 2001, which are unchanged from those in the proposed rule, are shown in the table below. The 2001 quotas for both ocean quahogs and Maine mahogany quahogs are the same as the 2000 quotas. However, the 2001 surf clam quota is 11 percent higher than the 2000 quota.

PROPOSED 2001 SURF CLAM/ OCEAN QUAHOG QUOTAS

| Fishery | 2001 final quotas (bu) | 2001 final quotas (hL) |
|---|---|---|
| [1]Surf clam | 2,850,000 | 1,518,000 |
| [1]Ocean quahog | 4,500,000 | 2,396,000 |
| [2]Maine mahogany quahog | 100,000 | 35,240 |

[1] 1 bushel = 1.88 cubic ft. = 53.24 liters
[2] 1 bushel = 1.2445 cubic ft. = 35.24 liters

**Classification**

NMFS prepared a FRFA for this action. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preamble to this rule and are not repeated here. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this rule.

There were no public comments submitted in response to the initial regulatory flexibility analysis (IRFA). No changes were made from the proposed rule.

In 1999, a total of 45 vessels reported harvesting surf clams or ocean quahogs from Federal waters under an individual transferable quota (ITQ) system. In the small artisanal fishery for ocean quahogs in Maine, 38 vessels reported harvests. All of these vessels are small entities.

Nine to 12 processors participated in the surf clam and ocean quahog fisheries. However, five firms are responsible for the vast majority of purchases in the exvessel market and sale of processed clam products in appropriate wholesale markets. In 2000, surf clam allocation holders totaled 106, while 65 firms or individuals held ocean quahog allocation.

The alternatives implemented by this final rule are expected to minimize economic impacts on small entities while achieving the conservation goals and objectives of the FMP because two of the quotas are the same as last year's quotas, one represents an 11-percent increase over last year, and all fall within OY..

NMFS considered four alternatives to the selected 2001 surf clam quota. The selected surf clam quota of 2.85 million bu (1.518 million hL) represents an 11-percent increase over the 2000 quota of 2.565 million bu (1.366 million hL). This alternative was selected because it would provide a quota large enough to allow for some increase in demand for the product, while not setting it so high as to force some allocation holders out of business. There were two alternatives with quotas smaller than the one selected. The alternative with the least quota allocation represents the minimum OY provided under the FMP (1.85 million bu (0.985 million hL)), a 28-percent decrease from the 1999 quota. This quota was not selected because, at this quota level, although the price per bushel would likely increase, the overall revenues may decrease because it is not likely that the increased price would compensate for the reduction in amount of sales. The 2.365- million bu (1.259-million hL) quota alternative, the quota alternative adopted in 1998, and the 1999 status quo alternative (2.565 million bu (1.366 million hL)), were not selected because they provided no opportunity for an increase in demand of surf clams. The 3.4-million bu (1.810-million hL) alternative quota represents a 33-percent increase from the 1999 quota and is the maximum quota allowed by the FMP. This alternative was rejected because it would very likely depress exvessel prices and increase the risk of business failure for allocation holders not associated with a processor, as vertically integrated companies are expected to buy product from vessels using allocations they control before buying product outside the company.

NMFS considered four alternatives to the selected 2001 ocean quahog quota. The selected quota (4.5 million bu (2.396 million hL)) was chosen because it is the same quota as was adopted for 1999 and 2000, it does not restrain the fishery, and it is not likely to change exvessel prices in the fishery. There were two alternatives with quotas smaller than the one selected. The alternative with the least quota allocation (4.0 million bu (2.130 million hL)), represents the minimum OY provided under the FMP, and is a 12-percent decrease from the 1999 quota. The other quota alternative (4.250 million bu (2.263 million hL)) represents a 6-percent decrease from the 1999 quota. Given that both of these alternatives could potentially be constraining to the fishery, these alternatives were not selected. Two alternatives above the selected quota were also considered, 6.0 million bu (3.194 million hL), the maximum OY allowed by the FMP, and 4.75 million bu (2.529 million hL), a 6-percent increase from the 1999 quota. These alternatives were not selected because of a concern that upcoming stock assessments may recommend reduced quotas and that the fishery would most likely not be able to utilize such an increase in the quota.

NMFS considered two alternatives to the selected 2001 Maine mahogany quahog quota of 100,000 Maine bu (35,240 hL). The selected quota and all alternatives fall within the range of OY established by the FMP. A quota of 100,000 Maine bu was chosen because it represents the highest quota possible under the FMP in the absence of a scientific assessment of the resource indicating the quota could be set at a higher level. Two alternatives smaller than the selected quota were considered, including quotas of 50,000 Maine bu (17,624 hL) and 72,466 Maine bu (25,543 hL). However, these alternatives were not selected because decreasing the quota would unnecessarily constrain the fishery.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because this rule only establishes year-long quotas to be used for the sole

purpose of closing the fishery when the quotas are reached and does not establish any requirements for which a regulatory entity must come into compliance, it is unnecessary to delay for 30 days the effective date of this rule. Therefore, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(d)(5), finds good cause not to delay the effective date of this final rule.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Regional Administrator (see **ADDRESSES**).

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

Dated: January 19, 2001.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 01–2197 Filed 2–2–01; 8:45 am]

**BILLING CODE 3510–22–S**

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 697

**[Docket No. 000412106-0363-03; I.D. 032200A]**

**RIN 0648-AO02**

## Atlantic Coastal Fisheries Cooperative Management Act Provisions; Horseshoe Crab Fishery; Closed Area

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to prohibit fishing for horseshoe crabs and limit possession of them in an area in the exclusive economic zone (EEZ) encompassing a 30-nautical mile (nm) radius (in a shape roughly equivalent to a rectangle) seaward from the midpoint of the territorial sea line at the mouth of Delaware Bay. The intent of this final rule is to provide protection for the Atlantic coast stock of horseshoe crab and to promote the effectiveness of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crab.

**DATES:** Effective March 7, 2001.

**ADDRESSES:** Copies of supporting documents, including an Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA), are available from Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Paul Perra, 301-427-2014.

**SUPPLEMENTARY INFORMATION:**

### Background

The background and rationale for this final rule were contained in the preamble to the proposed rule, published in the **Federal Register** on October 16, 2000 (65 FR 61135), and are not repeated here. Additional background for this final rule is available and contained in a EA/RIR/FRFA prepared by NMFS. (see **ADDRESSES**).

This final rule prohibits fishing for horseshoe crabs in an area in the EEZ encompassing a 30-nm radius (in a shape roughly equivalent to a rectangle) seaward from the midpoint of the territorial sea line at the mouth of Delaware Bay (closed area); prohibits possessing horseshoe crabs on a vessel with a trawl or dredge while in the closed area; and requires fishermen to return to the water all horseshoe crabs caught in the closed area incidental to any fishing operations, including whelk fishing.

The closed area in the EEZ off Delaware Bay is bounded as follows: (1) on the north by a straight line connecting points 39°14.6'N. lat., 74°30.9'W. long. (3 nm off of Peck Beach, New Jersey) and 39°14.6'N lat., 74°22.5'W. long.; (2) on the east by a straight line connecting points 39°14.6'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 74°22.5'W. long.; (3) on the south by a straight line connecting points 38°22.0'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 75°00.4'W. long. (3 nm off of Ocean City, MD); and (4) on the west by the outermost boundary of state waters.

### Comments and Responses

Comments were received during three scoping meetings and during the 15-day comment period on the proposed rule. Scoping meetings on the proposed regulations were held: on September 5, 2000, in Dover, DE; on September 6, 2000, in Cape May, NJ, and on September 7, 2000, in Salisbury, MD. During the scoping meetings, NMFS received 22 comments in favor of the proposed closed area and 14 against. During the 15-day comment period on the proposed rule, NMFS received 58 written comments from the public. In general terms, 54 of the commenters were in favor of the proposed rule, and 4 were opposed to its issuance.

Comments in favor were submitted by local and national conservation groups, various state agencies, some biomedical companies, and the general public. Comments in opposition to the proposed rule were submitted by organizations representing the fishing industry, by some biomedical companies, and by members of the public. In addition, several companies that use horseshoe crab blood for biomedical purposes and some of the conservation organizations requested a modification to the proposed rule that would allow horseshoe crabs to be harvested in the closed area for biomedical use.

All comments received during the comment period were considered. An additional 38 persons submitted comments within 7 days after the deadline for the comment period. These comments did not raise issues that were not raised by others during the proposed rule comment period or considered by NMFS during the rulemaking process. All but one of these late comments were in favor of the proposed rule. These comments were considered, but are neither identified nor responded to here. Comments received during the comment period are identified and responded to as follows:

*Comment 1*: Several commenters stated that the closed area needs a ''sister'' law enacted by the state to protect horseshoe crabs from overharvest on beaches.

*Response*: Harvesting on beaches is under the purview of each state which cooperatively manages horseshoe crabs with other states and the Federal government through implementation of the Commission's Fishery Management Plan for Horseshoe Crabs.

*Comment 2*: Twenty-three commenters stated that they wanted the immediate establishment of the proposed closed area.

*Response*: NMFS is establishing the closed area as expeditiously as possible.

*Comment 3*: A commenter was concerned that NMFS would not be able to enforce the requirement that all horseshoe crabs caught in the closed

area incidental to other fishing operations, including whelk fishing, be returned to the water.

*Response*: NMFS intends to work closely with the U. S. Coast Guard to enforce the closed area. This final rule requires fishermen to return immediately to the water any horseshoe crab caught in the closed area regardless of whether the horseshoe crabs were caught on purpose or incidental to any fishing activities, including whelk fishing. This final rule also prohibits the possession of horseshoe crabs by a vessel or a person on a vessel with a trawl or dredge in the closed area. Considering the depths in the closed area, trawls and dredges are the only efficient gears that could be used to catch horseshoe crabs. Therefore, a vessel fishing for whelks would not be able to catch horseshoe crabs in the closed area and put them in their whelk traps.

*Comment 4*: One commenter stated that horseshoe crab limits should be for the entire Delaware Bay and extend offshore to 36-nm. Also, two conservation groups submitted comments that, while they were in favor of the closed area, they would prefer a much larger closed area.

*Response*: The commenter who wanted a 36-nm closure did not explain why it would be critical to expand the closed area to 36-nm. Also, several conservation organizations wanted more area closed to better insure the protection of horseshoe crabs. Delaware Bay waters are managed under the purview of state laws. Federal jurisdiction starts 3 nm out from the mouth of the Delaware Bay. This final rule protects horseshoe crabs in Federal waters within an area encompassing a 30-nm radius of the Delaware Bay. NMFS believes that an area with a 30-nm radius is adequate to protect the majority of horseshoe crabs in the Delaware Bay and reasonably balances the need to protect horseshoe crabs and the need to consider impacts on the fishing industry and the biomedical industry. Extending the closed area would unnecessarily disrupt fishing activities conducted away from the area of concern.

*Comment 5*: Three commenters requested that a notice of the closure be sent to all horseshoe crab and whelk fishermen that take or land horseshoe crabs in the vicinity of the closed area as well as to horseshoe crab and whelk dealers from Delaware through Virginia.

*Response*: In addition to publishing this final rule in the **Federal Register**, which provides notice to all members of the public in accordance with the requirements of the Administrative Procedure Act, NMFS intends to work closely with the state marine fisheries agencies in the Delaware Bay area to identify and notify those involved in the whelk and horseshoe crab fisheries about the closed area.

*Comment 6*: Eleven commenters stated that they were in favor of some biomedical harvest of horseshoe crabs in the closed area. One commenter stated that scientific collection permits should be issued to authorize the biomedical harvest of horseshoe crabs from the closed area. Six commenters stated that they wanted biomedical companies that now take horseshoe crabs from the proposed closed area to be grandfathered-in so that they may continue to take horseshoe crabs from the closed area. They also stated that no more than the current biomedical harvest should be allowed, and that the biomedical harvest should only be allowed under a provision requiring horseshoe crabs be returned to the ocean after bleeding. One commenter stated that closed area is the only area to obtain horseshoe crabs for the biomedical industry in the fall of the year. Two commenters stated that there should be no exceptions to the ban on horseshoe crab fishing in the closed area for the biomedical industry.

*Response*: The NMFS trawl survey shows that horseshoe crabs are found both north and south of the closed area during the fall of the year. Only about 10 percent of the horseshoe crabs harvested for the biomedical industry currently come from the closed area. However, given that Limulus Ameobocyte Lysate can only be produced from horseshoe crab blood and is essential for detection of bacterial endotoxins in drugs and medical equipment, NMFS agrees that a limited biomedical harvest of horseshoe crabs should be allowed in the closed area. However, since biomedical harvest is for commercial purposes, the use of scientific collection permits is inappropriate. Because both the Commission and NMFS need additional data on the horseshoe crab resource in order to manage it optimally, NMFS believes that the appropriate mechanism for allowing biomedical harvest would be an exempted fishing permit for which any biomedical company could apply. Grandfathering-in biomedical companies with a history of harvesting horseshoe crabs from the closed area would not result in the generation of needed data. Regulations at 50 CFR §§ 600.745 and 697.22 establish the procedures for requesting an exempted fishing permit, as well the procedures and criteria NMFS would use to review and issue an exempted fishing permit. Using the exempted fishing permit mechanism, NMFS could limit the total biomedical harvest to 10,000 horseshoe crabs annually as recommended by the Commission's Horseshoe Crab Management Board. In addition, NMFS will require that all crabs harvested be returned to the water after bleeding and, for example, that the number of crabs and the locations where they were taken from and returned to the water be reported to NMFS in order to help fulfill data needs.

*Comment 7*: Eighteen commenters stated that the closed area should be designated the Carl N. Shuster Jr. Horseshoe Crab Reserve as proposed by NMFS.

*Response*: NMFS agrees.

*Comment 8*: One commenter stated that the closed area should be closed for 5 years with an option to renew, and 20 commenters stated that the closed area should be established for at least 10 to 15 years.

*Response*: The Commission's Horseshoe Crab Management Board has recommended that the closed area remain in place for at least 5 years. NMFS has not designated an ending date for the closed area, but considers the closure a long-term conservation measure that may be adjusted through rulemaking as more information on the horseshoe crab resource, its ecological role, and the fishery become available.

*Comment 9*: Five commenters stated that a monitoring program should be established to measure the effectiveness of the closed area.

*Response*: NMFS intends to work in cooperation with the states and the Commission through the Commission's technical committee and the stock assessment committee to monitor the effectiveness of the closed area.

*Comment 10*: A commenter stated that NMFS, in its analysis, virtually ignored the substantial economic activity (in the hundreds of millions of dollars) generated by non-consumptive uses of the horseshoe crabs, such as shorebird/horseshoe crab tourism and the use of horseshoe crab by the medical industry.

*Response*: While no detailed economic analysis was done on shorebird/horseshoe crab tourism and the value of the horseshoe crab resource to the medical industry, NMFS agrees that these activities generate substantial economic benefits, and that protection of the horseshoe crab resource through the closed area will ensure the continuation of some of these benefits. NMFS reviewed economic studies that stated that the potential economic benefits for the coastwide biomedical fishery may range up to $175 million dollars, and that New Jersey's Delaware

Bay shorebird tourism may generate up to $32 million in gross economic benefits. However, the biomedical estimates included input from Massachusetts and South Carolina where the majority of horseshoe crabs are harvested for biomedical purposes and the shorebird economic study for New Jersey estimated the range of gross economic benefits from $19 million to $28 million.

*Comment 11*: Several commenters stated that there is no scientific justification for the closed area and that horseshoe crabs are already sufficiently protected by stringent harvest restrictions.

*Response*: While there is no valid coastwide stock assessment, there are Delaware Bay egg count and spawner surveys, and the State of Delaware's trawl survey that show declining trends in abundance. The scientific peer review of the Commission's horseshoe crab stock assessment cited concern over localized population declines, and recommended a risk-averse horseshoe crab management program. The closed area is part of a risk-averse management program that will help protect the Delaware Bay spawning population of horseshoe crabs. Also, information submitted during the comment period from a horseshoe crab scientist associated with the Virginia Institute of Marine Science provided additional rationale that the closed area protects the juvenile horseshoe crabs in the offshore area and, therefore, closes a significant horseshoe crab management ''loop hole'' and strengthens the management program for horseshoe crabs.

*Comment 12*: One commenter stated that the proposal will damage tourism because the horseshoe crab population will increase and large numbers of horseshoe crabs will die on the beaches and rot, thereby making beach going activities repulsive.

*Response*: The closed area will help increase the horseshoe crab population and will help provide food for migratory shorebirds. Beach clean up activities could be organized, if an increased population of horseshoe crabs fouls the beaches.

*Comment 13*: One commenter expressed support for the closed area stating that the closure will cause an increase in the number of horseshoe crabs. However, the commenter expressed concern that this would only supply more eggs for sea gulls, and suggested that the number of gulls needs to be reduced or the gulls need to be prevented from feeding on horseshoe crab spawning beaches.

*Response*: The purpose for the closed area is to help protect the horseshoe crab population so that it may fulfill its multiple uses, including providing food for migratory shorebirds and other wildlife. As the number of horseshoe crab spawners increases, more horseshoe crab eggs will be produced and buried on the beaches. This will eventually provide more eggs for birds and more eggs to sustain the horseshoe crab population.

*Comment 14*: Two commenters stated that the closed area is too large and that a smaller area from 5 to 15-nm should be closed initially. One of these commenters also commented that a smaller closure, combined with enhanced monitoring, may show that there is no need to extend the closure to a larger area.

*Response*: Horseshoe crabs have been found as far as 35-nm offshore, and a significant component of the Delaware Bay horseshoe crab population extends out to the continental shelf. Therefore, closing an area from 5 to 15-nm offshore would not be an adequate risk-averse approach to protect the Delaware Bay horseshoe crab population because a good portion of the Delaware Bay population of horseshoe crabs migrate beyond 15-nm of the mouth of the Delaware Bay.

*Comment 15*: A commenter said the closure will negatively affect eel and whelk fishermen through a reduced supply of horseshoe crab and higher horseshoe crab bait prices.

*Response*: Horseshoe crabs may still be harvested outside the closed area. Horseshoe crab bait availability would primarily be a function of harvest quotas enacted by Atlantic coast states. Reduced supply may be made up for by the use of bait bags that can reduce horseshoe crab needs by 50 percent per whelk trap, and thus reduce demand for bait. Also, alternative baits can be used instead of horseshoe crabs, especially in the eel fishery. These factors may cause bait prices to rise or fall depending on their cost and efficiency. However, the impact of any reduced supply or increase in bait prices that results from the closed area is overridden by the overall need to protect the horseshoe crab resource so that it may fulfill its sustainable long-term multiple uses.

*Comment 16*: A commenter stated that the short time period to implement the closure will negatively impact fishermen.

*Response*: The Commission recommended the closed area on February 9, 2000; NMFS published an advance notice of proposed rulemaking regarding the closed area on May 3, 2000 (65 FR 25698); and published the proposed rule on October 16, 2000 (65 FR 61135). NMFS is proceeding with this final rule because of the need to act in a risk-averse manner to protect the horseshoe crab resource. Concerns over the decline of the Delaware Bay horseshoe crab population and the need to provide migrating shorebirds passing through the Delaware Bay area, many of which are experiencing their own population declines (especially the Red Knot), a plentiful horseshoe crab egg food source, make issuance of the final rule necessary at this time.

*Comment 17*: A commenter stated that no efforts are being made to get artificial bait on the market and that without horseshoe crabs for bait, the whelk and eel fisheries will be devastated.

*Response*: NMFS disagrees. The development of artificial bait to substitute for horseshoe crabs is ongoing at several universities and in industry. NMFS is also helping with a pilot program to manufacture horseshoe crab bait bags that could reduce horseshoe crab bait needs by 50 percent. Eel and whelk vessels should be able to obtain bait under state quotas, which when applied with bait bags may meet their needs. Several substitute baits, such as clam bellies, shrimp heads, and cheese, have been reported through the Commission's October 5, 1999, Alternative Bait Workshop.

*Comment 18*: A commenter stated that NMFS should proceed very carefully because closed areas for one species may be used as a conduit to secure additional regulations on other species and/or gear types.

*Response*: NMFS considers the closed area only as a reserve for horseshoe crabs, and is only restricting the simultaneous possession of horseshoe crabs and gear that could be used to illegally harvest horseshoe crabs in the closed area.

*Comment 19*: There were two comments that stated that prohibiting vessels from having on board all other fishing gear aside from whelk traps makes fishing vessels less efficient.

*Response*: NMFS agrees. NMFS had originally proposed prohibiting all other fishing gear when possessing whelk pots in the closed area. However, based on scoping meetings and the comments received on the proposed rule, it was determined that vessels that fish for whelks with horseshoe crabs operate with different types of fishing gear on board and fish for other species while making whelk fishing trips. NMFS agrees that some other commercial gears, other than whelk pots, should be allowed on vessels that also possess horseshoe crabs. Therefore, the final rule has been modified to prohibit only

trawls or dredges on vessels possessing horseshoe crabs in the closed area.

*Comment 20*: A commenter stated that if trawls and dredges are prohibited on vessels with horseshoe crabs in the closed area, the trawl nets or dredge bags should be allowed to be stowed below deck, and trawl doors should be allowed to remain on the vessel since expensive dockside crane service is required to remove the doors.

*Response*: Due to the difficulty of enforcing a prohibition on fishing for horseshoe crabs in the closed area and a stowage requirement, NMFS believes it is unwise to allow vessels to have the net or bag portion of trawl or dredge gear on board, even if stowed, while also allowing them to possess horseshoe crabs. However, NMFS sees no need to have trawl doors removed from vessels, when the trawl nets or dredge bags are already removed from the vessel.

*Comment 21*: A commenter stated that whelk vessels fishing in the closed area should be allowed to use lobster and fish pots while possessing horseshoe crabs on board.

*Response*: NMFS agrees for the same reasons as cited in comment 19.

*Comment 22*: A commenter stated that vessels shipping horseshoe crabs for bait or biomedical purposes should be allowed to transit the closed area since going around the reserve adds time and expense and impedes interstate commerce.

*Response*: In order to support the enforcement of the closed area, a vessel with a trawl or dredge may not possess horseshoe crabs in the closed area. However, transportation of horseshoe crabs through the closed area is allowed as long as the vessel does not have a trawl or dredge.

*Comment 23*: Two commenters stated that the closed area is unnecessary because the coastwide state-by-state quotas are sufficient to protect horseshoe crabs.

*Response*: The closed area is necessary to give added protection to the Delaware Bay horseshoe crab population, because even though there are individual state quotas, there is no restriction on where horseshoe crabs can be taken in the Federal waters. Without the closed area, vessels from many states could concentrate their fishing in Federal waters near the mouth of the Delaware Bay and, while fishing under quotas intended for other regions, deplete the Delaware Bay horseshoe crab population.

*Comment 24*: NMFS received two comment letters signed by a total of six persons stating that the southern boundary of the closed area should be at the Maryland/Delaware state line, because vessels harvesting horseshoe crabs off the Maryland coast harvest crabs in the morning, and then fish for other species before returning to port.

*Response*: Moving the southern boundary line of the closed area to the Maryland/Delaware state line would shrink the closed area north to where it no longer would give enough protection to the Delaware Bay horseshoe crab population.

*Comment 25*: A commenter requested that more Federal regulations be implemented to further restrict harvest of horseshoe crabs in Federal waters.

*Response*: NMFS believes that the closed area and the state harvest quotas under the Commission's plan are a good first step in protecting horseshoe crabs. NMFS is preparing a proposed rule to improve on the reporting of the horseshoe crab catch and prevent transfer of horseshoe crabs at sea. As further information becomes available on the horseshoe crab resource and fishery, NMFS will adjust the conservation measures on horseshoe crabs in Federal waters as necessary to protect the horseshoe crab resource and support its competing multiple uses.

*Comment 26*: Four commenters requested that NMFS implement better reporting requirements regarding the horseshoe crab harvest and prevent transfer-at-sea of horseshoe crabs.

*Response*: NMFS is in the process of developing a proposed rule that would implement better reporting requirements and prohibit transfers-at-sea of horseshoe crabs in the EEZ by Federal horseshoe crab fishery permit holders, regardless of whether they are in the EEZ or state waters.

*Comment 27*: Several commenters stated that NMFS should also recognize the role that horseshoe crabs and their eggs play in providing food for marine finfish and shellfish, and marine mammals.

*Response*: NMFS acknowledges that horseshoe crab eggs and horseshoe crabs are a food source for numerous marine animals, including shorebirds, sea turtles, finfish, crabs, and mollusks.

*Comment 28*: A commenter stated that the economic impacts cited for the value of horseshoe crabs as bait in the proposed rule totally ignored the true economic impact to eel, catfish, and whelk fishermen.

*Response*: NMFS in its analysis of the proposed rule cited economic values for the eel and whelk fisheries (the value of horseshoe crab bait for the catfish fishery is uncertain), and recognized that the availability of horseshoe crab bait will affect the eel and whelk fisheries. However, the major impact on horseshoe crab bait availability and price is through state commercial horseshoe crab quotas, which have limited the coastwide take of horseshoe crabs by 25 percent or more. While the closed area may make it less efficient to collect horseshoe crabs, it is not a major factor in limiting the availability of horseshoe crab to the eel, catfish, and whelk fishermen. NMFS acknowledges that there may be some minor impacts to the eel, catfish, and whelk fishermen due to the closed area, but was unable to quantify those impacts.

## Changes from the Proposed Rule

In response to comments received during the three scoping meetings and during the 15-day comment period for the proposed rule, the following changes were made:

In § 697.2, although definitions for trawl and dredge are listed in § 600.10, they are added to § 697.2 to make the regulations easier to understand and follow.

In § 697.2, the definitions for whelk and whelk trap are removed because paragraph (f)(2) under § 697.23 no longer uses either term.

In § 697.23, paragraph (f)(2), the paragraph has been rewritten to take out the reference to whelk traps and applies the prohibition on the possession of horseshoe crabs to any vessel or person on a vessel with a trawl or dredge. In the proposed rule, no commercial fishing gear except whelk traps were allowed on board if a vessel or person was in possession of horseshoe crabs. See response to comment 20 for more details.

In response to the removal of the definition for horseshoe crabs in § 697.2 and paragraph (e)(1) and (2) of § 697.7 due to the removal of another rule (65 FR 64896, October 31, 2000), the following changes were made:

In § 697.2, the definition for horseshoe crab is added.

In § 697.7, paragraph (e)(3) through (5), were redesignated (e)(1) through (3).

Additional background for this final rule is available and contained in a EA/RIR/FRFA prepared by NMFS (see **ADDRESSES**).

## Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that these actions are compatible with the effective implementation of the Commission's coastal FMP and consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS prepared a FRFA that describes the impact of this final rule on small entities. A summary of the FRFA follows:

This final rule is published under the authority of section 803 of the Atlantic Coastal Fisheries Cooperative Management Act. The purpose of the rule is to improve cooperative management of the Atlantic coast horseshoe crab Limulus polyphemus and provide protection to the Delaware Bay population of horseshoe crabs to support conservation of the resource and help assure an adequate supply of horseshoe crab eggs for migrating shorebirds as well as an adequate supply of horseshoe crabs for bait and medical purposes over time. The need for the closed area is explained in the preamble to this final rule and is not repeated here. This final rule is estimated to affect 19 fishing vessels, all of which are small businesses; effects on them are expected to be minor. Of these 19 vessels, 9 target horseshoe crabs directly and 10 land horseshoe crabs caught incidentally while targeting other species.

There are no reporting, record keeping or other similar compliance requirements in this final rule. No other Federal rules duplicate or conflict with the proposed action.

Six alternatives were examined when the rule was proposed. They were: Alternative 1 - no action; Alternative 2 - a closed area using a radius of 30-nm, prohibition on possession of horseshoe crabs; Alternative 3A - a rejected proposed preferred alternative that would close an area encompassing a 30-nm radius off the mouth of Delaware Bay to horseshoe crab fishing, and allow limited possession of horseshoe crabs in the closed area by whelk vessels with no other commercial fishing gear except whelk traps; Alternative 4 - a closed area using a radius of 15-nm, prohibition on possession of horseshoe crabs; Alternative 5 - a closed area using a radius of 15-nm, limited possession of horseshoe crabs by whelk fishermen; and Alternative 6 - a closed area using a radius of 60-nm, limited possession of horseshoe crabs by whelk fishermen.

NMFS had originally proposed Alternative 3A (prohibition on fishing for horseshoe crabs but allowed possession of horseshoe crabs by fishing vessels with no commercial fishing gear other than whelk traps on board in the closed area). However, based on scoping meetings and the comments received on the proposed rule, it was determined that vessels that fish for whelks using horseshoe crabs as bait operate with different types of fishing gear on board and fish for other species while making whelk fishing trips. NMFS agrees that some other commercial gears, other than whelk pots, should be allowed on vessels that also possess horseshoe crabs and fish in the closed area. Therefore, the rule has been modified as stated below in Alternative 3.

Alternative 3, the selected, preferred alternative closes an area encompassing a 30-nm radius off the mouth of Delaware Bay to horseshoe crab fishing, and prohibits possession of horseshoe crabs by a vessel or by a person on a vessel with a trawl or dredge. This allows vessels that have horseshoe crabs on board in the closed area to fish for other species with a variety of gears, but not trawls or dredges. The rationale for allowing such activity is based on the fact that trawls or dredges are most likely the only gears that would be used to harvest horseshoe crabs at depths such as those in the closed area. Therefore, for enforcement proposes, they are not allowed on vessels that also possess horseshoe crabs in the closed area. However, other gears aside from trawls or dredges are not as capable of catching horseshoe crabs and pose little risk to the enforcement of the closed area. Also, based on public comment, trawl doors may be left on vessels possessing horseshoe crabs in the closed area. This relieves fishermen of the cost of removing the doors if they wish to possess horseshoe crabs in the closed area. These modifications to the proposed rule provide some economic relief to the fishing fleet while not compromising the conservation goals of the action. The preferred alternative was selected because it was the best approach to preventing overfishing of the horseshoe crab resource off Delaware Bay while minimizing adverse economic impacts on fishing vessels.

The six other alternatives were rejected for the following reasons:

Alternative 1, the no action alternative, may result in future reductions in ex-vessel revenues, tourism revenues, and revenues from the biomedical industry if taking no action results in a decline in the horseshoe crab resource off Delaware Bay. Alternative 2, which would close an area encompassing a 30-nm radius off of mouth of Delaware Bay to horseshoe crab fishing and prohibit possession of horseshoe crabs, would prevent vessels from fishing for whelks in the closed area by prohibiting them from taking horseshoe crabs as bait into the closed area. Alternative 4, which closes an area encompassing a radius of 15-nm and prohibits possession of horseshoe crabs, was rejected because it did not provide adequate protection for horseshoe crabs and would have prevented the whelk fishery from continuing in the closed area. Alternative 3A was rejected because it would have unnecessarily prevented vessels with horseshoe crabs on board from fishing in the closed area for other species with gears that are not likely to catch horseshoe crabs. Alternative 5, a closed area using a radius of 15-nm with limited possession of horseshoe crabs, was rejected because it did not provide adequate protection for horseshoe crabs and would have prevented vessels with horseshoe crabs on board from fishing in the closed area for other species with gears that are not likely to catch horseshoe crabs. Alternative 6, a closed area using a radius of 60-nm while allowing limited possession of horseshoe crabs, was rejected because it would have closed more area than needed to protect the Delaware Bay horseshoe crab resource, and thus unnecessarily negatively effected fishing vessels. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be significant for purposes of Executive Order 12866.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Chief, Staff Office for Intergovernmental and Recreational Fisheries (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 697**

Fisheries, Fishing, Intergovernmental relations.

Dated: January 19, 2001.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is amended as follows:

## PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 continues to read as follows:

**Authority:** 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

2. In § 697.2, the definitions for ''Dredge,'' ''Horseshoe crab,'' and ''Trawl'' are added alphabetically to read as follows:

### § 697.2 Definitions.

* * * * *

*Dredge* means a gear consisting of a mouth frame attached to a holding bag constructed of metal rings or mesh.

* * * * *

*Horseshoe crab* means members of stocks or populations of the species *Limulus polyphemus*.

* * * * *

*Trawl* means a cone or funnel-shaped net that is towed through the water, and can include a pair trawl that is towed simultaneously by two boats.

* * * * *

3. In § 697.7, paragraph (e) is added to read as follows:

**§ 697.7 Prohibitions.**

* * * * *

(e) Atlantic Coast Horseshoe Crab fishery. In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fish for horseshoe crabs in the Carl N. Shuster Jr. Horseshoe Crab Reserve described in § 697.23(f)(1).

(2) Possess horseshoe crabs on a vessel with a trawl or dredge in the closed area described in § 697.23(f)(1).

(3) Fail to return to the water immediately without further harm, all horseshoe crabs caught in the closed area described in § 697.23(f)(1).

4. In § 697.22, the introductory paragraph and paragraph (a)(1) are revised to read as follows:

**§ 697.22 Exempted fishing.**

The Regional Administrator may exempt any person or vessel from the requirements of this part for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab resource or fishery, pursuant to the provisions of § 600.745 of this chapter.

(a) * * *

(1) Have a detrimental effect on the American lobster, Atlantic striped bass, weakfish, Atlantic sturgeon, or horseshoe crab resource or fishery; or

* * * * *

5. Section 697.23, paragraph (f) is added to read as follows:

**§ 697.23 Restricted gear areas.**

* * * * *

(f) Carl N. Shuster Jr. Horseshoe Crab Reserve. (1) No vessel or person may fish for horseshoe crabs in the area known as the Carl N. Shuster Jr. Horseshoe Crab Reserve bounded as follows:

(i) On the north by a straight line connecting points 39°14.6'N. lat., 74°30.9'W. long. (3 nm off of Peck Beach, NJ) and 39°14.6'N lat., 74°22.5'W. long.

(ii) On the east by a straight line connecting points 39°14.6'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 74°22.5'W. long.

(iii) On the south by a straight line connecting points 38°22.0'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 75°00.4'W. long. (3 nm off of Ocean City, MD).

(iv) On the west by the outermost boundary of state waters.

(2) No vessel or person on a vessel with a trawl or dredge may possess horseshoe crabs in the area described in paragraph (f)(1) of this section.

(3) Horseshoe crabs caught in the area described in paragraph (f)(1) of this section must be returned immediately to the water without further harm.

[FR Doc. 01–2120 Filed 2–2–01; 8:45 am]

BILLING CODE: 3510–22–S

# Proposed Rules

Federal Register
Vol. 66, No. 24
Monday, February 5, 2001

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.

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 240 and 249

**[Release No. 34–43860; File No. S7–03–01]**

**RIN 3235–AI06**

### Proposed Rule Changes of Self-Regulatory Organizations

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is proposing to amend the requirements applicable to self-regulatory organization (''SRO'') filings of proposed rule changes with the Commission. Specifically, the Commission is proposing to issue a release relating to the proposed rule change within 10 business days of receipt (or within such longer period as to which the SRO consents in writing) and allow the majority of trading rules to be effective upon filing. The amendments are designed to expedite the review of SRO rules, and to allow SROs to more quickly introduce changes to their markets.

**DATES:** Comments must be received by April 6, 2001.

**ADDRESSES:** All comments concerning the rule proposals should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File Number S7–03–01, this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site *http://www.sec.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jack Drogin, Assistant Director, at (202) 942–0188; Elizabeth Badawy, Accountant, at (202) 942–0740; Terri Evans, Special Counsel, at (202) 942–4162; Joseph Morra, Special Counsel, at (202) 942–0781; and Sonia Patton, Attorney, at (202) 942–0753; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

**SUPPLEMENTAL INFORMATION:**

## I. Introduction

Under section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''), SROs generally must file proposed rule changes with the Commission for notice, public comment, and Commission approval, prior to implementation.[1] The purpose of this requirement is to help to ensure, through Commission review and the public comment process, that SROs carry out the purposes of the Exchange Act.[2] Increasingly, however, SROs operating securities markets are facing competition from alternative trading systems (''ATSs''),[3] which as broker-dealers are not subject to the same rule filing requirements. They also are competing with foreign markets as technology has allowed U.S. broker-dealers to indirectly access overseas markets.

The Commission believes that investors are best served by a regulatory structure that facilitates fair and vigorous competition among market participants and fosters investor protection.[4] Accordingly, over the years, the Commission has periodically revised the rule filing requirements to meet the changing needs of SROs in a competitive financial marketplace. For example, in 1994, the Commission adopted amendments to Rule 19b–4 [5] to expedite the rule filing review process for certain non-controversial filings.[6] In addition, in 1998 the Commission amended Rule 19b–4 to allow SROs to list and trade new derivative securities products pursuant to existing SRO trading rules, surveillance programs, and listing standards without submitting a proposed rule change pursuant to Section 19(b).[7] The Commission's goal was to speed the introduction of new derivative securities products and enable SROs to maintain a competitive balance with the overseas and OTC derivative markets.[8]

The Commission believes that it is now appropriate to consider further amending the rule filing process to allow SROs operating securities markets to be more competitive in today's marketplace. Enhancing the SROs' ability to implement and to respond quickly to changes in the marketplace should encourage innovation and better services to investors, such as further automating the execution of trades. Investors should also benefit from a competitive environment in which SROs may easily adapt their trading rules to respond to market opportunities. Therefore, the Commission is proposing to replace Rule 19b–4 [9] in its entirety with a new rule, Rule 19b–6.[10]

---

[1] 15 U.S.C. 78s(b). Section 3(a)(26) of the Act, 15 U.S.C. 78c(a)(26), defines the term ''self-regulatory organization'' to mean any national securities exchange, registered securities association, registered clearing agency, and, for purposes of Section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board (''MSRB'').

[2] The Commission review and public comment process help ensure, for example, that SROs refrain from using their regulatory powers in an unfair or anticompetitive manner to the detriment of investors.

[3] An alternative trading system is any ''organization, association, person, group of persons or system'' that (1) brings together purchasers and sellers of securities or otherwise performs functions that are commonly performed by a stock exchange, and (2) does not establish conduct rules or discipline subscribers other than by exclusion from trading. 17 CFR 242.300(a).

[4] Congress emphasized this principle when it amended the Act in 1975:

In 1936, this Committee [on Banking, Housing and Urban Affairs] pointed out that a major responsibility of the SEC in the administration of the securities laws is to ''create a fair field of competition.'' This responsibility continues today. . . . The objective would be to enhance competition and to allow economic forces, interacting *within a fair regulatory field,* to arrive appropriate variations in practices and services. It would obviously be contrary to this purpose to compel elimination of differences between types of markets or types of firms that might be competition enhancing.

S. Rep. No. 75, 94th Cong., 1st Sess., at 8 (1975) (emphasis added) (''Senate Report'').

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 35123 (Dec. 20, 1994), 59 FR 66692 (Dec. 28, 1994) (hereafter referred to as the ''Non-Controversial Rule Adopting Release'').

[7] *See* Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (hereafter referred to as the ''New Products Adopting Release'').

[8] *Id.*

[9] 17 CFR 240.19b–4.

[10] 17 CFR 240.19b–6.

## II. Background

### *A. Current Procedures for Submission and Approval of SRO Rule Filings*

Section 19(b)(1) of the Act [11] requires each SRO to file with the Commission its proposed rule changes [12] accompanied by a concise general statement of the basis for, and purpose of, the proposed rule change. Once an SRO files a proposed rule change, the Commission must publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless the Commission approves it, or as discussed below, it is otherwise permitted to become effective under Section 19(b)(3) of the Act.[13]

Section 19(b)(2) of the Act [14] delineates the standards and time periods for Commission action either to approve a proposed rule change or to institute and conclude a proceeding to determine whether a proposed rule change should be disapproved. The Commission must approve a proposed rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations applicable to the SRO proposing the rule change.[15] If the Commission does not make that finding, it must institute proceedings to determine whether to disapprove the proposed rule change.[16] The Commission also may approve a proposed rule change on an accelerated basis prior to 30 days after publication of the notice in the **Federal Register** if the Commission finds good cause for doing so and publishes its reasons.[17]

Section 19(b)(3) of the Act [18] provides that, in certain circumstances, a proposed rule change may become effective without the notice and approval procedures specified in section 19(b)(2).[19] Specifically, section 19(b)(3)(A) [20] allows certain types of proposed rule changes to be effective upon filing with the Commission if designated by an SRO as falling within any of the following categories: (1) Constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO; [21] (2) establishing or changing a due, fee, or other charge imposed by the SRO; [22] or (3) concerned solely with the administration of the SRO.[23] Section 19(b)(3)(A)(iii) [24] also grants the Commission the authority to expand by rule the scope of proposed rule changes immediately effective under section 19(b)(3)(A),[25] if the Commission determines that such expansion is consistent with the public interest and the purposes of section 19(b). Rule 19b–4(f) [26] implements the authority of section 19(b)(3)(A) [27] by detailing further the scope of proposed rule changes that may be filed under that Section. The language of Rule 19b–4(f) tracks those categories enumerated in section 19(b)(3)(A), and includes a category adopted in 1980 relating to registered clearing agencies,[28] as well as categories adopted in 1994 relating to minor systems changes and non-controversial filings.[29]

### *B. Purpose of Proposed Rule 19b–6*

The rule filing process under the Exchange Act serves several important policy goals. First, the administrative notice and comment procedure helps to ensure that interested persons have an opportunity to provide input into SRO actions that may have a significant impact on market participants and individual investors.[30] In addition, the rule filing process allows the Commission to review proposed rule changes to help ensure that they are consistent with the Act and the goals of the national market system, such as fair competition among markets, transparency of prices, best execution of customer orders, and orderly and linked markets. As Congress has stated on a number of occasions, SROs are ''quasi-public agencies, not private clubs, and * * * their goal is the prevention of inequitable and unfair practices and the advancement of the public interest.'' [31] An important way for the Commission to help ensure that the SROs are serving those goals is through its review of SRO rule filings.

While the Commission continues to believe that the rule review process serves fundamental public policy goals, it also believes that it is time to reevaluate the process in order to accommodate changes in the marketplace and the need of SROs for greater certainty. The competitive landscape has shifted dramatically since the Commission first began reviewing SRO proposed rules 25 years ago. With the expanding integration of on-line technology in the securities industry, ATSs are transforming the structure of the nation's capital markets. For example, electronic communication networks (''ECNs''), which are a type of ATS, now account for approximately 30 percent of the total share volume and 40 percent of the dollar volume in Nasdaq securities, and approximately 3 percent of the total share and dollar volume in listed securities.[32] Broker-dealers also have developed automated systems that allow investors in the U.S. to trade indirectly on foreign markets.

Because ATSs, which are not registered as exchanges and therefore do not have self-regulatory responsibilities, do not have to submit trading rules to the Commission for approval, and because most foreign exchanges have different regulatory requirements than U.S. markets, ATSs and most foreign

[11] 15 U.S.C. 78s(b)(1).

[12] Section 19(b)(1) of the Act requires each SRO to file with the Commission ''any proposed rule or any proposed change in, addition to, or deletion from the rules of . . . [a] self-regulatory organization.'' In turn, Sections 3(a)(27) and 3(a)(28) of the Act provide, essentially, that the term ''rules of a self-regulatory organization'' means (i) the rules of the MSRB or the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of any other SRO and (ii) such stated policies, practices, and interpretations of an SRO (other than the MSRB) as the Commission, by rule, may determine to be deemed to be rules.

[13] 15 U.S.C. 78s(b)(3).

[14] 15 U.S.C. 78s(b)(2).

[15] *Id.*

[16] *Id.*

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(3).

[19] 15 U.S.C. 78s(b)(2).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] Rule 19b–4(b) defines the term ''stated policy, practice or interpretation'' to mean generally any material aspect of the operation of the facilities of the SRO or any statement made available to the membership, participants, or specified persons that establishes or changes any standard, limit, or guideline with respect to rights and obligations of specified persons or the meaning, administration, or enforcement of an existing rule. 17 CFR 240.19b–4(b).

[22] The Commission has stated that as a matter of general policy, a proposed rule change of an SRO, other than the MSRB, that establishes or changes a due, fee, or other charge applicable to a non-member or non-participant should be filed under section 19(b)(2) for full notice and comment. *See* Securities Exchange Act Release No. 17258 (Oct. 30, 1980), 45 FR 73906, at 73910 (Nov. 7, 1980). The Commission emphasizes that a proposed rule change that is filed pursuant to section 19(b)(3)(A), 15 U.S.C. 78s(b)(3)(A), may *not* become effective retroactively. For example, if a proposed rule change regarding fees was properly filed under section 19(b)(3)(A), 15 U.S.C. 78s(b)(3)(A), on December 3rd, the fee would be effective as of December 3rd. The SRO could *not* apply the fee as of December 1st.

[23] The Commission, however, notes that a rule that solely addresses floor decorum or safety is *not* required to be filed with the Commission.

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] *See* Securities Exchange Act Release No. 17258 (Oct. 30, 1980), 45 FR 73906 (Nov. 7, 1980).

[29] *See* Non-Controversial Rule Adopting Release, *supra* note 6.

[30] For example, SROs exercise certain quasi-governmental powers over members through their ability to impose disciplinary sanctions, deny membership, and require members to cease doing business entirely or in specified ways.

[31] Securities Industry Report of the Subcommittee on Securities, S. Doc. No. 13, 93d Cong., 1st Sess. 156 (1973).

[32] *See* Division of Market Regulation, Commission, Study of Electronic Communication Networks and After-Hours Trading (2000).

exchanges can often make changes to their trading procedures and systems swiftly. U.S. SROs can be placed at a competitive disadvantage because they must wait for the completion of the public comment period and the Commission review process before implementing similar changes. The Commission, therefore, is proposing to revise the process for SRO trading rules to allow U.S. SROs to alter the majority of trading rules without waiting for Commission approval. The Commission would be able to abrogate a trading rule and activate the normal notice and comment period where a trading rule raises significant issues, including its conformity to the federal securities laws. By expediting the rule filing process, the Commission's goal is to strike a balance between the need for greater flexibility and certainty, and its statutory obligation to oversee SRO actions.

## III. Description of Rule 19b–6

To streamline the rule filing process, the Commission is proposing to completely replace Rule 19b–4 [33] with new Rule 19b–6, which incorporates certain provisions from Rule 19b–4.[34] In addition, the Commission is proposing to replace Form 19b–4 with new Form 19b–6 to reflect the changes made by the proposed rule. Generally, proposed Rule 19b–6 would (1) require that the Commission issue a release relating to the proposed rule change within 10 business days of filing with the Commission or within such longer time period as to which the SRO consents in writing; (2) eliminate the pre-filing requirement and the 30-day delayed operational period before a non-controversial rule change can be filed or become operative; (3) expand the categories of proposed rule changes that qualify for immediate effectiveness to include trading rules (other than a trading rule that would make fundamental structural changes to the market, and that would significantly affect the protection of investors or the public interest or impose a significant burden on competition); (4) clarify that where a proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Exchange Act,[35] no inference may be made regarding whether the proposed rule change is in the public interest, including any impact on competition; and (5) permit SROs to file proposed rule changes electronically.

### *A. Issuance of a Release Relating to Proposed Rule Changes Within 10 Business Days of Filing*

In the past, commenters have stated that ''the rule filing process, in general, could be shortened if SRO rules that [were] submitted to the Commission in proper form were published for notice and comment immediately, or within a set period of time, such as ten business days.'' [36] The Commission agrees that prompt issuance of a release relating to a properly drafted proposed rule change would further enhance the efficiency of the rule filing process under section 19(b) of the Act.[37] The Commission is therefore proposing to issue a release relating to filed proposed rule changes that meet the requirements of the rule within 10 business days of receipt by the Commission or within such longer period as to which the SRO consents in writing.[38]

The Commission notes that proposals must be drafted with precision if they are to elicit meaningful public comment. In light of past problems with SROs submitting unclear and internally inconsistent rule filings, the Commission is proposing to prescribe in Rule 19b–6(f) and Form 19b–6 the items that must be included in a rule filing for it to be considered properly filed. Proposed Rule 19b–6(f) states that in order for a proposed rule change to be properly filed, it must provide an accurate statement of the authority for and basis of the proposed rule change, including the impact on competition, as well as a summary of any written comments received by the SRO. In addition, the SRO's proposed rule change must not be inconsistent with the existing rules of the SRO and must contain a certification from a senior SRO official regarding its accuracy and completeness. Under proposed Rule 19b–6, incomplete or inadequate filings will not be deemed to have been filed with the Commission; the Commission will return to an SRO any filings that fail to comply with the directions in proposed Form 19b–6, which are described further in Part F below.

### *B. Proposed Changes to Non-Controversial Filings Category*

Generally, Rule 19b–4(f)(6) [39] allows proposed rule changes that are non-controversial to be effective upon filing with the Commission, provided that the SRO submits written notice of its intent to file the proposal at least five business days in advance of filing. Non-controversial rule changes do not become operative until 30 days after the date of filing.[40] At the time the Commission adopted this rule, several commenters recommended that the 30-day period be shortened, eliminated, or applied only in specific instances.[41] The Commission, however, believed that the 30-day delayed operational date for non-controversial filings was necessary to allow the Commission the opportunity to abrogate a rule change without significant disruption to existing operations if the Commission determined after subsequent review or public comment that the proposal was not properly filed within the non-controversial category.[42]

In light of its experience with this provision, the Commission preliminarily believes that it may now be appropriate to eliminate the 30-day delayed operational date and the five-day pre-filing requirement for non-controversial rule filings. Eliminating the time periods in this provision would enable SROs to implement immediately those rule changes that do not significantly affect the protection of investors or the public interest, do not impose any significant burden on competition, are not designed to permit unfair discrimination between customers, issuers, and brokers or dealers, and do not relate to trading rules (which are covered in a separate provision). The Commission notes that because the majority of rule filings submitted pursuant to this provision to date have been truly non-controversial, abrogation under this category has been unnecessary.

The Commission notes that it retains the statutory authority to abrogate a proposed rule change submitted under section 19(b)(3)(A) of the Act [43] within 60 days of the date of filing of the

[33] 17 CFR 240.19b–4.

[34] Unless clearly inconsistent with the language of Rule 19b–6, prior interpretations of Rule 19b–4 will continue to apply. *See, e.g.*, Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906 at note 40 (November 7, 1980) (As a matter of general policy, a proposed rule change of an SRO, other than the MSRB, that establishes or changes a due, fee, or other charge applicable to a non-member or non-participant should be filed under section 19(b)(2) for full notice and comment.).

[35] 15 U.S.C. 78s(b)(3)(A).

[36] *See* New Products Adopting Release, *supra* note 7, citing comment letters; *see also* Non-Controversial Rule Adopting Release, *supra* note 6.

[37] 15 U.S.C. 78s(b).

[38] Proposed Rule 19b–6(a). This proposal would apply not only to national securities exchanges and association, but also to clearing organizations.

[39] 17 CFR 240.19b–4(f)(6).

[40] The Commission has frequently exercised its authority to shorten or waive either the five-day advance notice requirement or the 30-day delay in operational effectiveness. 17 CFR 240.19b–4(f)(5)(iii) and Non-Controversial Rule Adopting Release, *supra* note 6.

[41] *See* Non-Controversial Rule Adopting Release, *supra* note 6, citing comments.

[42] *Id.*

[43] 15 U.S.C. 78s(b)(3)(A).

proposed rule change.[44] In other words, the Commission could require that the SRO refile the proposed rule change under section 19(b)(2) for regular notice and comment if it determined, for example, that the rule change was controversial and warranted further public comment. Once abrogated, a proposed rule change would not be effective unless subsequently approved by Commission order. Because these changes to the existing rule filing process would give the SROs greater flexibility, the Commission would be prepared to use its abrogation authority more often than it has in the past. For example, it could abrogate if it determined upon subsequent review or public comment that a proposed rule change was inappropriately submitted under Section 19(b)(3)(A) or otherwise raised significant legal or policy concerns that would justify further review pursuant to section 19(b)(2).

The Commission is also proposing three technical changes to the non-controversial filing category. First, the Commission is proposing to specifically exclude from this category SRO trading rules because the Commission is proposing a separate provision for these rules, as discussed below. Second, the Commission is proposing to clarify that a proposed rule change filed under this category may not ''unfairly discriminate between customers, issuers, and brokers or dealers.'' The Commission notes that this merely restates the requirement under section 6(b)(5) of the Act[45] that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Third, the Commission is amending the rule language to clarify that it is intended to apply solely to minor proposed rule changes and other proposed rule changes that are substantially the same as the rule of another self-regulatory organization that previously was filed with and approved by the Commission pursuant to section 19(b)(2) of the Exchange Act[46] (*i.e.,* so-called ''copycat filings'').

*C. Immediate Effectiveness of Trading Rules*

Under the Commission's proposal, SROs would have the choice to file proposed rule changes governing most trading rules to take effect pursuant to section 19(b)(2)[47] or section 19(b)(3) of the Act.[48] Under section 19(b)(3), the proposed rule change would be effective upon filing provided that the SRO had established procedures for the effective surveillance of activity conducted pursuant to the trading rule and for enforcement of the rule.[49] However, those few trading rules that make fundamental structural changes to the market, and that significantly affect the protection of investors or the public interest or impose a significant burden on competition, would not be eligible to become immediately effective.[50] The Commission also wishes to emphasize that an SRO filing a proposed trading rule for immediate effectiveness pursuant to section 19(b)(3)(A) must be prepared to cease applying the proposed trading rule promptly upon Commission abrogation of the proposed rule change. If the Commission abrogates a proposed rule change, the SRO may not continue to implement the rule unless it is approved by the Commission pursuant to section 19(b)(2) of the Exchange Act.

Trading rules would be defined broadly to include SRO rules governing the trading of securities through the SRO or its facilities. The definition includes rules governing: use of or access to an order entry, routing, or execution system; member proprietary trading; display of quotations; market maker activities;[51] trading units; order types; odd lot differentials;[52] priority of orders, bids, and offers (but not handling of customer orders, including limit orders); fast markets; trading hours; national securities exchange or national securities association rules governing comparison, clearance and settlement of transactions by means of exchange or association facilities;[53] disagreements on executions; obligations of specialists to maintain fair and orderly markets;[54] special offerings; exchange distributions;[55] closing contracts;[56] authority and actions of order book officials;[57] activities of floor brokers;[58] and trading activities of specialists and lead market makers.

For example, rules eligible for immediate effectiveness would include rules extending the close of trading, affecting the crossing of orders or the priority of orders,[59] mandating executions of orders up to a particular size at the displayed bid or offer, or affecting the operation of certain small order execution systems.[60] The proposed trading rule definition would also encompass proposed rule changes suspending firm quotes in fast markets[61] or requiring the dissemination of an inferior quote whenever the market maker fails to

[44] 15 U.S.C. 78s(b)(3)(C). *See also* Section F, *infra.*

[45] 15 U.S.C. 78f(b)(5).

[46] 15 U.S.C. 78s(b)(2).

[47] 15 U.S.C. 78s(b)(2).

[48] 15 U.S.C. 78s(b)(3).

[49] Proposed Form 19b–6 would require that the chief executive officer, general counsel, or other officer or director of the self-regulatory organization that exercises similar authority to certify that the self-regulatory organization had established procedures to conduct surveillance for compliance with, and enforce, the proposed rule change.

[50] *See* discussion at Part D, *infra.*

[51] One example of this type of filing is a filing submitted by the Pacific Exchange, Inc. (''PCX'') that allowed Lead Market Makers to perform certain floor broker functions in addition to order book official and market maker functions. A Lead Market Maker is permitted, but not obligated, to accept non-discretionary orders that are not eligible to be placed in the public order book, and is permitted to represent such orders as a floor broker. *See* File No. SR–PCX–99–25.

[52] An example of this type of filing is File No. SR–CHX–94–23, which allowed The Chicago Stock Exchange (''CHX'') specialists to charge a differential for certain odd lot trades.

[53] *See, e.g.,* File No. SR–NYSE–91–09 (relating to the New York Stock Exchange (''NYSE'') overnight comparison system allowing (1) security position movements and (2) the comparison of cash ''ex-clearing house'' transactions). Rule 19b–6 would not include SRO rules governing trade reporting and also would not apply to the rules of a registered clearing agency.

[54] One example of this type of rule filing is a filing submitted by the NYSE adopting an ''adjusted stabilization'' method of measuring specialist performance. *See* File No. SR–NYSE–99–01.

[55] This is intended to cover proposed rule changes such as File No. SR–NYSE–97–15, which amended NYSE Rule 392 to require notification by member organizations of any stabilizing bid made in connection with an offering of an exchange-listed security.

[56] One example of this type of rule filing is File No. SR–NYSE–82–23, which amended NYSE Rules 282, 284, and 289 relating to the reduction of NYSE staff involvement in processing buy-ins and to provide for the delivery of buy-ins from the initiating firm directly to the defaulting firm.

[57] This is intended to cover proposed rule changes such as File No. SR–CBOE–98–27, which amended Chicago Board Options Exchange's (''CBOE's'') rules governing the execution of orders by order book officials or designated primary market makers' book staff to provide for the electronic execution of certain orders on the ''live ammo'' screen. The proposal allowed an order book official or a designated primary market maker to designate orders to be electronically executed against market makers standing in the crowd.

[58] An example of this kind of proposed rule change is File No. SR–PCX–99–17, which allowed PCX floor brokers to represent telephonic orders in the crowd without a written ticket, provided the ticket has already been completed, time stamped, and is being delivered to the floor broker in the crowd.

[59] For example, the PCX submitted a proposed rule change that entitled floor brokers, under certain conditions, to cross a specified percentage of a customer order that the floor broker brought to the post on behalf of the floor broker's member firm before market makers in the crowd could participate in the transaction. *See* File No. SR–PCX–99–18. In addition, the NYSE submitted a proposed rule change that would facilitate the crossing of certain orders of a specified minimum size against certain displayed quotes. *See* File No. SR–NYSE–99–24.

[60] One example of this type of filing is a proposed rule change submitted by the American Stock Exchange (''Amex'') that increased from 50 to 100 the maximum number of equity and index option contracts in an order that may be entered through the Amex Order File System into the Amex Options Display Book. *See* File No. SR–Amex–99–11.

[61] *See, e.g.,* File No. SR–CBOE–99–52.

execute the full size of an incoming order.[62]

This proposal would be limited to trading rules, where SROs need greater flexibility because they must respond quickly to competition in the marketplace. SROs do not face the same competition with respect to member regulation. Only SROs exercise quasi-governmental powers in enforcing compliance by members with both the legal requirements of the Act and ethical standards that extend beyond those requirements. Accordingly, the definition of trading rule would not include rules governing membership, member regulation, discipline, arbitration, or financial responsibility (such as margin, net capital, and recordkeeping). Rules affecting customer communications or suitability also would not be included under the proposed definition of a trading rule. Finally, the definition of trading rule would not include rules affecting listing standards or corporate governance. The Commission believes that public comment and Commission approval of these types of rules are critical to help ensure that investor protection and listing standards are not compromised, and that members of an SRO are afforded due process.[63]

*D. Trading Rules Ineligible for Immediate Effectiveness*

SRO trading rules occasionally involve fundamental issues of market structure and fairness to customers, members, and non-members, including potentially anti-competitive or discriminatory conduct on the part of the SRO's market. The Commission believes that trading rules that would have a significant impact on market structure or competition should be subject to the full notice and comment process. It is through this process that the public has an opportunity to raise concerns, for example, about an SRO's use of its regulatory powers to unfairly advantage its market at the expense of its competitors. The Commission, therefore, is proposing to exclude from Rule 19b–6(b)(6) trading rules that would make fundamental structural changes to that SRO's market and that significantly affect investors or impose a significant burden on competition. These rules would be subject to the regular notice and comment period pursuant to section 19(b)(2) of the Act. For example, under proposed Rule 19b–6, SRO rules dealing with the conversion to decimal pricing would not have been effective upon filing, although they would likely have been considered trading rules within the proposed definition of that term. The transition from quoting in fractions to quoting in decimals, and the technological concerns and investor protection issues associated with that transition, have far reaching ramifications for the securities markets.[64]

*E. Request for Comment*

The Commission requests the views of commenters on the proposed rule, including whether it provides SROs with sufficient flexibility to adapt to changes in their marketplaces while ensuring that the goals of the national market system are satisfied. In addition, to assist commenters, the Commission specifically requests comment on the following:

1. Is the definition of a trading rule appropriate? Is it over-inclusive or under-inclusive?

2. Should proposed rule changes that are considered non-controversial or that govern trading rules become operative immediately or should the operative date be suspended for 60 days to allow the Commission to abrogate those proposed rule changes without disrupting the operation of the SROs?

3. What other types of proposed rule changes should the Commission consider making eligible for immediate effectiveness? For example, should it include listing standards, new products, or position limits? Would investors and market participants continue to be adequately protected if other types of rule changes were included?

*F. Operation of Proposed Rule 19b–6*

As discussed above, under proposed Rule 19b–6, the Commission will issue a release relating to properly filed proposed rule changes submitted pursuant to section 19(b)(1) within ten business days of filing or within such longer period as to which the SRO consents in writing. SROs will continue to have the option to file their proposals for regular notice, comment and approval under section 19(b)(2) or for immediate effectiveness under section 19(b)(3)(A).[65]

A proposed rule change will be not considered filed on the date it is received by the Commission unless: (1) A properly completed Form 19b–6 is submitted; (2) in order to elicit meaningful comment, it is accompanied by (a) a clear and accurate statement of the authority for, and basis and purpose of, such rule change, including the impact on competition, if any, and (b) a summary of any written comments received by the SRO on the proposed rule change; (3) it is not inconsistent with the existing rules of the SRO, including any other rules proposed to be amended; and (4) the chief executive officer, general counsel, or other officer or director of the SRO that exercises similar authority, certifies to the accuracy and completeness of the statements made on new Form 19b–6 (the form is discussed in part F below).

If the filing is complete, including the certification, the Commission will post the proposal on the Commission's web page and send it to the **Federal Register** for publication. The notice would typically provide for a 21-day comment period, beginning on the date after the notice appears in the **Federal Register**. If the filing is incomplete, it would not be deemed filed and would be returned to the SRO.

The Commission may abrogate an SRO rule submitted for immediate effectiveness under section 19(b)(3)(A) and Rule 19b–6 within 60 days from the date the proposed rule change is filed with the Commission.[66] As discussed above, the Commission may determine that abrogation is appropriate when a filing raises concerns about unfair discrimination or competition, raises controversial issues, or otherwise could substantially benefit from notice and comment. This decision will be based not only on the Commission's initial examination of the filing, but also on comments the Commission receives during the 21-day comment period. The Commission anticipates that the large majority of these proposed rule changes would be effective upon filing and would not be subsequently abrogated. If the Commission abrogates a proposed rule change, the SRO must refile the proposed rule change with the Commission for review pursuant to section 19(b)(2).[67]

If an SRO wishes to make a substantive amendment to a proposed rule change filed for immediate effectiveness, the SRO must refile the proposed rule change in its entirety. At that point, the 60-day abrogation period would run from the date of filing of the

[62] *See, e.g.,* File No. SR–NASD–99–20.

[63] The Commission will issue a release relating to these types of rules within 10 business days under Rule 19b–6(a).

[64] *See* Order Directing the Exchanges and the NASD to Submit a Decimalization Implementation Plan Pursuant to Section 11A(a)(3)(B) of the Act, Securities Exchange Act Release No. 42360 (January 28, 2000).

[65] *But see* note 74, *infra.*

[66] 15 U.S.C. 78s(b)(3)(C).

[67] Section 19(b)(3)(C) states that ''the Commission summarily may abrogate the change in the rules of the self-regulatory organization * * * and require that the proposed rule change be refiled in accordance with'' section 19(b)(1) and reviewed in accordance with section 19(b)(2).

new amended filing, and the proposed rule change, in its entirety, would be deemed effective upon filing of the amendment and not from the date of the initial filing. If an SRO makes a timely[68] technical amendment (*i.e.,* to correct cross-references or other citations or to clarify minor points) to a filing, the 60-day abrogation period would continue to run from the date of the original filing, and the proposed rule change would be deemed effective as of the date of the original filing; the amendment therefore would not affect the abrogation period. Substantive amendments to proposed rule changes will be published in the **Federal Register** and posted on the Commission's web site. This will give the public the opportunity to comment on the substantive change. The Commission notes that its decision to abrogate or its failure to abrogate a proposed SRO rule change is not reviewable under section 25 of the Exchange Act.[69] If the Commission abrogates a proposed rule change, the abrogation will not affect the validity or force of the proposed rule change during the period the rule was in effect.[70]

*G. Form 19b–6*

Generally, Form 19b–6 requires an SRO to (1) submit a complete description of the terms of its proposal; (2) describe the impact of the proposed rule change on various segments of the market, including members, member constituencies, and non-members; and (3) describe how the filing relates to existing rules of the SRO. In addition to the foregoing, a proposed rule change must provide an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change, including its impact on competition, if any, as well as a summary of any written comments received by the SRO.[71] The proposed rule change must also be consistent with the existing rules of the SRO, including any other proposed rule changes. And finally, the chief executive officer, general counsel, or other officer or director of the SRO that exercises similar authority must certify to the accuracy and completeness of the statements made on Form 19b–6, and certify that the SRO will enforce and conduct surveillance for compliance with the rule.

The Commission firmly believes that, to provide the public with a meaningful opportunity to comment, a proposed rule change must be accurate, consistent, and complete. Currently, Commission staff devotes significant time to processing proposed rule changes, reviewing them for accuracy and completeness, and preparing them for publication. This time is lengthened because the SROs often must correct, clarify, or further substantiate their proposals to address issues identified by the reviewing staff. In the future, because of the expedited process and the immediate effectiveness of many proposals, proposed rule changes that do not: (1) Contain a properly completed Form 19b–6; (2) contain a clear and accurate statement of the authority for, and basis and purpose of, such rule change, including the impact on competition; (3) contain a summary of any written comments received by the SRO; (4) state that the proposal is not inconsistent with the existing rules of the SRO, including any other rules proposed to be amended; and (5) include the certification described above will not be deemed filed. These proposed rule changes will be returned to the SRO and will not be deemed filed until all required information has been provided.

*H. Where a Proposed Rule Change Becomes Effective Upon Filing Pursuant to Section 19(b)(3)(A) of the Act, No Inference May Be Made Regarding Whether the Proposed Rule Change Is in the Public Interest, Including Any Impact on Competition*

Subsection (h) of Rule 19b–6 clarifies that where a proposed rule change becomes effective upon filing pursuant to section 19(b)(3)(A) of the Act,[72] no inference may be made regarding whether the proposed rule change is in the public interest, including whether it has an impact on competition. Although the Commission intends to conduct a review of proposed rule changes that are effective on filing in order to determine whether they raise significant issues requiring abrogation of the filing, the Commission will not be taking final action unless it chooses to abrogate the proposed rule change and subsequently issues an order approving or disapproving the proposal pursuant to section 19(b)(2) of the Act. Therefore, the Commission will not necessarily have made a final determination on whether the proposed rule change is in the public interest, including whether it has an impact on competition, where the proposal has become effective upon filing pursuant to section 19(b)(3)(A) of the Exchange Act. Absent a Commission order approving the proposed SRO rule change pursuant to section 19(b)(2), a person may not necessarily draw conclusions about whether the proposed rule change is in the public interest, including whether it has an impact on competition. However, if an SRO determines that it would like the Commission to make such a determination, the SRO still has the option of submitting the proposed rule change under section 19(b)(2)[73] instead of section 19(b)(3).[74]

*I. Electronic Submission*

Currently, SROs are required to submit nine copies of Form 19b–4 before a proposal is deemed filed. Under Rule 19b–6, the Commission is proposing to allow SROs to file proposed rule changes with the Commission electronically, provided they promptly file nine paper copies, one of which must be manually signed. SROs that elect to file proposed rule changes electronically must do so in accordance with standards to be published by the Commission. Proposed rule changes that are not filed pursuant to these standards will not be deemed filed and will be returned to the SRO.

*J. Request for Comment*

In addition to requesting comment on the Commission's overall approach to rule filings under proposed Rule 19b–6,

[68] A "timely" technical amendment to a proposed rule change must be received by the Commission with enough time prior to the end of the abrogation period to ensure that the filing is complete and accurate. If a technical amendment is not timely filed, the Commission may choose to abrogate the proposed rule change as incomplete or inaccurate. In general, to be considered timely, technical amendments must be received by the Commission not less than ten business days prior to the end of the abrogation period.

[69] 15 U.S.C. 78y. *See* 15 U.S.C. 78s.

[70] 15 U.S.C. 78s(b)(3)(C).

[71] These requirements exist today under Form 19b–40.

[72] *See, e.g.,* 15 U.S.C. 78c(f) (requiring the Commission, when it is engaged in the review of an SRO rule and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation), 15 U.S.C. 78f (requiring that the rules of an exchange be designed, in general, to protect investors and the public interest and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers), 15 U.S.C. 78o–3 (requiring that the rules of an association not be designed to permit unfair discrimination between customers, issuers, broker or dealers and do not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act).

[73] 15 U.S.C. 78s(b)(2).

[74] 15 U.S.C. 78s(b)(3). Under this proposal, an SRO could submit a proposed rule change either under section 19(b)(3)(A) for immediate effectiveness *or* under section 19(b)(2) for notice and comment and Commission approval. An SRO would not be able to submit a proposed rule change under section 19(b)(3)(A) and then submit the same rule language under section 19(b)(2). Of course, if the Commission abrogated an SRO proposed rule change that was filed pursuant to section 19(b)(3), the proposed rule change would be reviewed under section 19(b)(2) upon filing by the SRO.

the Commission requests comment on the following:

1. Should the Commission continue to require paper copies and manual signatures on proposed rule filings? If not, under what conditions should SROs be permitted to file electronically? Should the Commission continue to require the submission of one paper copy with a manual signature?

2. What implications are there if the Commission requires SROs to file proposed rule filings through an electronic system?

*K. Additional Ways To Streamline the Rule Filing Process*

The Commission is also considering issuing abbreviated approval orders for proposed rule changes filed under section 19(b)(2) if a proposal raises no significant issues and the Commission does not receive any comment letters. An abbreviated approval order would cite the relevant statutory provisions, but would not include a detailed analysis, as it does today. The Commission requests comment on whether abbreviated orders raise any policy concerns.

*IV. Request for Comment*

Interested persons are invited to submit written data, views, and arguments concerning the proposed rulemaking. Persons making written submissions should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All submissions should refer to File No. S7–03–01, (this file number should be included on the subject line if E-mail is used), and should be submitted by April 6, 2001. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room. Electronically submitted comment letters will be posted on the Commission's Internet web site *http://www.sec.gov.*

## V. Costs and Benefits of the Proposed Rulemaking

The Commission is proposing to amend the requirements applicable to SRO filings of proposed rule changes with the Commission. Specifically, the Commission is proposing to issue a release relating to all proposed rule changes within 10 business days of receipt (or within such longer period as to which the SRO consents in writing) and allow the majority of trading rules to be effective upon filing. The Commission is considering the costs and benefits of proposed Rule 19b–6.

*A. Benefits*

The Commission preliminarily believes that, by expediting the rule filing process, the proposed rule will reduce significantly the SROs' regulatory burden and help SROs maintain their competitive balance with other market centers. For example, Commission staff determined that for 1999, it took the Commission approximately 101 days, on average (with a median of 67 days), to approve 95 rule filings submitted under section 19(b)(2) that potentially could qualify for expedited treatment under the new rule.[75]

Because, under the proposed rule, trading rules that otherwise would have been filed under section 19(b)(2) of the Act[76] may become immediately effective under section 19(b)(3),[77] the Commission believes that the proposed rule will foster innovation by allowing the SROs to more quickly adapt and meet the needs of market participants without waiting for Commission approval of their proposed rule changes. As a result, the Commission believes that the SROs may be able to more quickly implement new technology, which can enhance and improve trading efficiency. Improved trading efficiency could benefit investors (for example, by providing faster executions). In addition, the Commission believes that the ability of the SROs to more quickly adapt to changes could allow them to better compete in a global marketplace, especially because foreign markets may be subject to different regulations than U.S. markets. The Commission expects that the other changes proposed under Rule 19b–6, such as electronic filing and issuing a release relating to all proposed rule changes within 10 business days of receipt, will also expedite the processing of SRO proposed rule changes.

*B. Costs*

The Commission does not expect that the proposed rule will impose any additional costs on SROs, and may in fact reduce costs related to SRO rule changes. SROs are already obligated to submit proposed rule changes to the Commission and are further subject to potential abrogation of proposed rule changes submitted under section 19(b)(3)(A).[78] Proposed Rule 19b–6 is only intended to expedite the rule filing process. Further, the Commission expects that market participants will still be able to provide meaningful comment on proposed rule changes submitted by the SROs, because those filings will be published in the **Federal Register**.

*C. Request for Comment*

To assist the Commission in its evaluation of the costs and benefits that may result from proposed Rule 19b–6, commenters are requested to provide analysis and data relating to the anticipated costs and benefits associated with the proposed rule. Specifically, the Commission requests commenters to address whether proposed Rule 19b–6 would generate the anticipated benefits or impose any costs on U.S. investors or others.

## VI. Consideration of the Burden on Competition, Promotion of Efficiency, and Capital Formation

Section 23(a) of the Exchange Act[79] requires the Commission, when promulgating rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in furtherance of the purposes of the Act. Section 3(f) of the Exchange Act[80] requires the Commission, when engaged in rulemaking where it is required to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed rule is intended to expedite the review of SRO rules, and to allow SROs to more quickly introduce changes to their markets. The Commission is proposing to issue a release relating to the proposal within 10 business days of receipt (or within such longer period as to which the SRO consents in writing) and allow the majority of trading rules to be effective upon filing. This should help to foster innovation, increase competition, and thereby benefit investors. The Commission solicits comments on the impact of the proposed rule on competition, including competition between SROs, alternative trading systems, and other market participants. Finally, commenters should consider the proposed rule's effect on efficiency and capital formation.

[75] 15 U.S.C. 78s(b)(2).

[76] 15 U.S.C. 78s(b)(2).

[77] 15 U.S.C. 78s(b)(3).

[78] 15 U.S.C. 78s(b)(3)(A).

[79] 15 U.S.C. 78w(a)(2).

[80] 15 U.S.C. 78c(f).

## VII. Initial Regulatory Flexibility Analysis

Section 3(a) of the Regulatory Flexibility Act[81] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rule on small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[82] Rule 19b–6 and Form 19b–6 apply only to SROs. Furthermore, the proposed amendments are intended to streamline a process to which these SROs already are subject. The Chairman has certified that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. A copy of the certification is attached as Appendix A to this document.

## VIII. Paper Work Reduction Act

Certain provisions of the proposed rule and form contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[83] The Commission has submitted the collection to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The Commission is proposing to replace the current collection of information titled ''Rule 19b–4 Under the Securities Exchange Act of 1934'' (OMB Control No. 3235–0045; SEC File No. 270–38) with a new information collection titled ''Rule 19b–6 Under the Securities Exchange Act of 1934.'' The Commission is also proposing to replace the current collection of information titled ''Form 19b–4 Under the Securities Exchange Act of 1934'' (OMB Control No. 3235–0045; SEC File No. 270–38) with a new collection of information titled ''Form 19b–6 Under the Securities Exchange Act of 1934.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

### *A. Summary of Collection of Information*

Rule 19b–6 would require an SRO seeking Commission approval for a proposed rule change to provide the information stipulated in Form 19b–6. Form 19b–6 calls for a description of: the terms of a proposed rule change; the proposed rule change's impact on various market segments; and the relationship between the proposed rule change and the SRO's existing rules. Form 19b–6 also calls for an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change; the proposal's impact on competition; and a summary of any written comments received from SRO members.

### *B. Proposed Use of Information*

The information obtained under Rule 19b–6 would be used by the Commission to review rule change proposals filed by SROs pursuant to section 19(b)(1) of the Act[84] and to provide notice of the proposals to the general public. The Commission relies upon the information received in SRO rule change proposals, as well as public comment regarding the information, in reviewing and reaching decisions about any required action with respect to proposed rule changes.

### *C. Respondents*

There are currently 24 SROs subject to the collection of information, though that number may vary owing to the consolidation of SROs or the introduction of new entities. In recent years, these respondents have each filed an average of 21 rule change proposals per year, for an average annual total of approximately 500 filings subject to the current collection of information.

### *D. Total Annual Reporting and Recordkeeping Burden*

Proposed Rule 19b–6 is designed to streamline the rule filing process. For example, Rule 19b–6 would permit SROs to electronically file their rule change proposals. In addition, Form 19b–6 has been designed to be simpler than Form 19b–4. The Commission predicts that a simplified form will reduce by two hours the amount of SRO clerical time required to prepare the average filing.

A rule proposal is generally filed with the Commission after an SRO's staff has obtained approval by its board. Frequently, a substantial portion of the filing can be drawn from the materials prepared for the board's review. Therefore, the time required to complete a filing varies significantly and is difficult to separate from the time an SRO spends in developing internally the proposed rule change. However, several SROs have estimated at 35 hours the amount of time required to complete an average rule filing using present Form 19b–4. This figure includes an estimated 25 hours of in-house legal work and 10 hours of clerical work.

The Commission estimates at 33 hours the amount of time that would be required to complete an average rule filing using proposed Form 19b–6. This figure reflects the two hours savings in clerical hours resulting from the use of a simpler form. Using the estimate of 33 hours per rule filing under proposed Rule 19b–6, the total annual reporting burden under the new rule is 16,500 hours. This is based on an average of 500 rule change proposals received by the Commission each year, as noted in Subsection C, above. The Commission also estimates that an SRO will incur costs of $150.00 for overhead, including telephone charges, copying, and postage, for each proposed Form 19b–6 that it submits.

### *E. Retention Period of Record Keeping Requirements*

The SROs would be required to retain records of the collection of information for a period of not less than five years, the first two years in an easily accessible place, according to the current recordkeeping requirements set forth in Rule 17a–1 under the Act.[85]

### *F. Collection of Information Is Mandatory*

Any collection of information pursuant to proposed Rule 19b–6 and Form 19b–6 under the Act would be mandatory as a means for the Commission to review, and, as required, take action with respect to SRO rule change proposals.

### *G. Responses to Collection of Information Will Not Be Kept Confidential*

Other than information for which an SRO requests confidential treatment and which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, the collection of information pursuant to proposed Rule 19b–6 and Form 19b–6 under the Act would not be confidential and would be publicly available.[86]

### *H. Request for Comment*

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;

[81] 5 U.S.C. 603(a).

[82] 5 U.S.C. 605(b).

[83] 44 U.S.C. 3501 *et seq.*

[84] 15 U.S.C. 78s(b)(1).

[85] SROs may also destroy or otherwise dispose of such records at the end of five years according to Rule 17a–6 under the Act. 17 CFR 240.17a–6.

[86] A proposed rule change containing proprietary or otherwise sensitive information, such as details of an SRO's disaster operational back-up system, for example, would not be made public.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609 with reference to File No. S7–03–01. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–03–01, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

## IX. Statutory Basis and Text of Proposed Amendments

The deletion of Rule 19b–4 and Form 19b–4 and the addition of Rule 19b–6 and Form 19b–b under the Exchange Act is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(26), 3(a)(27), 3(b), 6, 15A, 15B, 17A, 19(b), 23(a) and 36(a) of the Act.

## List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.19b–4 is removed and reserved.

3. Section 240.19b–6 is added to read as follows:

### § 240.19b–6 Filings with respect to proposed rule changes by self-regulatory organizations.

(a) Filings with respect to proposed rule changes by a self-regulatory organization shall be made on Form 19b–6 (17 CFR 249.19b–6). The Commission shall issue a release relating to a proposed rule change filed pursuant to this section within 10 business days of filing with the Commission (or within such longer period as to which the self-regulatory organization consents in writing).

(b) A proposed rule change may take effect upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act, (15 U.S.C. 78s(b)(3)(A)) if properly designated by the self-regulatory organization as:

(1) Constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule;

(2) Establishing or changing a due, fee, or other charge;

(3) Concerned solely with the administration of the self-regulatory organization;

(4) Effecting a change in an existing service of a registered clearing agency that:

(i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and

(ii) Does not significantly affect the respective rights or obligations of the clearing agency or persons using the service;

(5) Effecting a minor change, or a change substantially the same as the rule of another self-regulatory organization that has previously been filed and approved pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), and:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition;

(iii) Does not unfairly discriminate between customers, issuers, and brokers or dealers; and

(iv) Does not relate to a trading rule; or

(6) Establishing or changing a trading rule, other than a trading rule that would make fundamental structural changes to the market, and that significantly affects the protection of investors or the public interest or imposes a significant burden on competition; provided that the self-regulatory organization certifies that it has established procedures for the effective surveillance of activity conducted pursuant to, and for the enforcement of, such trading rule.

(c) A stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless:

(1) It is reasonably and fairly implied by an existing rule of the self-regulatory organization; or

(2) It is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization.

(d) Regardless of whether it is made generally available, an interpretation of an existing rule of a self-regulatory organization shall be deemed to be a proposed rule change if:

(1) It is approved or ratified by the governing body of the self-regulatory organization; and

(2) It is not reasonably and fairly implied by that rule.

(e) (1) The listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of this section, if the Commission has approved, pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), the self-regulatory organization's procedures and listing standards for the product class that would include the new derivative securities product, the self-regulatory organization's trading rules for the product class have been approved pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) or have taken effect pursuant to section 19(b)(3)(A) of the Act (15 U.S.C. 78s(b)(3)(A)), and the self-regulatory organization has a surveillance program for the product class.

(2) Self-regulatory organizations shall retain at their principal place of business a file, available to Commission staff for inspection, of all relevant records and information pertaining to each new derivative securities product traded pursuant to this paragraph (e) for a period of not less than five years, the

first two years in an easily accessible place, as prescribed in § 240.17a–1.

(3) When relying on this paragraph (e), a self-regulatory organization shall submit Form 19b–6(e) (17 CFR 249.19b–6(e)) to the Commission within five business days after commencement of trading a new derivative securities product.

(f) (1) A proposed rule change shall not be deemed filed on the date it is received by the Commission unless:

(i) A completed Form 19b–6 (cite) is submitted;

(ii) In order to elicit meaningful comment, it is accompanied by:

(A) A clear and accurate statement of the authority for, and basis and purpose of, such rule change, including the impact on competition, if any; and

(B) A summary of any written comments received by the self-regulatory organization on the proposed rule change;

(iii) It is not inconsistent with the existing rules of the self-regulatory organization, including any other rules proposed to be amended; and

(iv) The chief executive officer, general counsel, or other officer or director of the self-regulatory organization that exercises similar authority, certifies the accuracy and completeness of the statements made on Form 19b–6 (17 CFR 249.19b–6).

(2) Filing a material amendment to a proposed rule change shall be deemed to be a refiling of the rule change for purposes of the timing requirements of this section and section 19(b) of the Act (15 U.S.C. 78s(b)).

(g) For purposes of this section:

(1) The term *trading rule* means a rule of a national securities exchange or a national securities association that governs the trading of securities on the exchange or association or through its facilities:

(i) The term *trading rule* shall include rules governing member trading, such as rules governing: use of or access to an order entry, routing, or execution system; member proprietary trading; display of quotations; market maker activities; trading units; order types; odd lot differentials; priority of orders, bids, and offers (but not customer orders, including limit orders), fast markets; trading hours; comparison; clearance and settlement of transactions; disagreements on executions; obligations of specialists to maintain fair and orderly markets; special offerings; exchange distributions; closing contracts; authority and actions of order book officials; activities of floor brokers; and trading activities of specialists and lead market makers.

(ii) The term *trading rule* shall not include rules governing member regulation, such as rules governing: transaction confirmations and account statements; member advertising, sales literature, and other customer communications; suitability and other sales practices; arbitration; disciplinary matters and sanctions; membership and eligibility requirements; financial responsibility (*e.g.,* net capital and recordkeeping); margin and use of collateral; transaction reporting; discretionary handling of customer orders (including limit orders); position limits; market surveillance; listing standards; and self-regulatory organization corporate governance.

(2) The term *stated policy, practice, or interpretation* means:

(i) Any material aspect of the operation of the facilities of the self-regulatory organization; or

(ii) Any statement made generally available to the membership of, to all participants in, or to persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, the self-regulatory organization (''specified persons''), or to a group or category of specified persons, that establishes or changes any standard, limit, or guideline with respect to:

(A) The rights, obligations, or privileges of specified persons or, in the case of national securities exchanges or registered securities associations, persons associated with specified persons; or

(B) The meaning, administration, or enforcement of an existing rule.

(3) The term *new derivative securities product* means any type of option, warrant, hybrid securities product or any other security whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

(h) Where a proposed rule change becomes effective pursuant to paragraph (b) of this section, no inference may be made regarding whether the proposed rule change is in the public interest, including whether it has an impact on competition.

(i) After instituting a proceeding to determine whether a proposed rule change should be disapproved, the Commission will afford the self-regulatory organization and interested persons an opportunity to submit additional written data, views, and arguments and may afford, in the discretion of the Commission, an opportunity to make oral presentations.

(j) Notice of orders issued pursuant to Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) will be given by prompt publication thereof, together with a statement of written reasons therefore. The Commission will promptly notify each self-regulatory organization upon issuing an order, pursuant to Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2), approving a proposed rule change by that self-regulatory organization.

(k) Self-regulatory organizations shall retain at their principal place of business a file, available to all interested persons for public inspection and copying, of all filings made pursuant to this section and all correspondence and other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning any such filing, whether such correspondence and communications are received or prepared before or after the filing of the proposed rule change.

(l) A proposed rule change by a self-regulatory organization may be filed electronically with the Commission, in a format acceptable to the Commission, provided that the self-regulatory organization promptly thereafter files with the Commission nine paper copies, one of which is manually signed.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for Part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

5. Section 249.818 and Form 19b–6 are added to read as follows:

**[Note:** Form 19b–6 is attached as Appendix B to this document.]

### § 249.818 Form 19b–6, for filings with respect to proposed rule changes by all self-regulatory organizations.

This form shall be used by all self-regulatory organizations, as defined in section 3(a)(26) of the Securities Exchange Act of 1934, to file proposed rule changes with the Commission pursuant to section 19(b) of that Act and Rule 19b–6 thereunder.

6. Section 249.819 and Form 19b–4 are removed and reserved.

7. Section 249.820 is amended by revising all references to ''19b–4(e)'' to read ''19b–6(e)''.

8. Form 19b–4(e) (referenced in § 249.820) is amended by revising all references to ''19b–4'' to read ''19b–6'' and all references to ''19b–4(e)'' to read ''19b–6(e)''.

This form shall be used by all self-regulatory organizations, as defined in section 3(a)(26) of the Securities Exchange Act of 1934, to file proposed

rule changes with the Commission pursuant to section 19(b) of that Act and Rule 19b–6 thereunder.

Dated: January 19, 2001.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

**[Note:** Appendix A and Appendix B to the Preamble Will Not Appear in the Code of Federal Regulations.]

## Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that Rule 19b–6 and Form 19b–6 under the Securities Exchange Act of 1934, 17 CFR 240.19b–6, which would streamline the self-regulatory organization (''SRO'') rule filing process would not have a significant economic impact on a substantial number of small entities. Rule 19b–6 and Form 19b–6 apply only to SROs, none of which are small entities. Furthermore, proposed Rule 19b–6 and Form 19b–6 are intended to streamline a process to which SROs already are subject. Accordingly, the proposed rule and form, if adopted, would not have a significant impact on a substantial number of small entities.

Dated: January 19, 2001.

**Arthur Levitt,**

*Chairman.*

## Appendix B—Form 19b–6

OMB APPROVAL

OMB Number: XXXX
Expires: XX-XX-XX
Estimated average burden hours per response: XX

File No. SR lllllllllllllll
Amendment No. lllllllllllll
(If Applicable)*

Securities and Exchange Commission, Washington, DC 20549–1001, Form 19b–6, Proposed Rule Change by:
llllllllllllllllllll
(Exact Name of Self-regulatory Organization)*

Pursuant to Rule 19b–6 under the Securities Exchange Act of 1934.

*(Do not include parenthetical material in completed form).

**General Instructions**

*A. When Should This Form Be Used?*

This Form 19b–6 must be used for filings of proposed rule changes by all self-regulatory organizations pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''). National securities exchanges, registered securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board are self-regulatory organizations for purposes of this Form 19b–6.

*B. Terms*

Unless the context clearly indicates otherwise, terms used in this Form 19b–6 have the meaning ascribed to them in the Act, as amended, and Rule 19b–6 thereunder.

*C. Format Requirements*

The Notice section of this Form 19b–6 must comply with the guidelines for publication in the **Federal Register** as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) [http://www.nara.gov/fedreg] offers guidance on Federal Register publication requirements in the *Federal Register Document Drafting Handbook,* October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to Commission rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (*e.g.,* SR–[SRO]–xx–xx). Failure to provide this information will result in the proposed rule change being deemed not properly filed. In addition, the OFR's *Drafting Legal Documents* is a general style guide to clear and concise legal writing.

*D. When Is a Proposed Rule Change Considered Filed?*

To be considered filed, an SRO must include with its proposed rule change: a completed Form 19b–6 that includes the cover sheet, Notice, Certification, and applicable Exhibits. The proposed rule change will be considered filed on the date that the Commission receives it if the filing complies with all requirements of this Form 19b–6 and the requirements of Rule 19b–6. Any filing that does not comply with all of the requirements of this Form 19b–6 will not be considered filed with the Commission and will be returned to the self-regulatory organization.

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act. It is the responsibility of the self-regulatory organization to prepare Items I and II of the Notice.

*E. What Other Information Must an SRO Include When Filing a Proposed Rule Change?*

*Exhibit 1*

(i) Copies of all notices issued by the self-regulatory organization soliciting comment on the proposed rule change.

(ii) Copies of all written comments on the proposed rule change received by the self-regulatory organization, even if the self-regulatory organization did not solicit comments. All comments should be presented in alphabetical order, together with an alphabetical listing of the commenters.

(iii) Any transcript of comments on the proposed rule change made at any public meeting or, if a transcript is not available, a summary of comments on the proposed rule change made at any meeting.

(iv) Any correspondence or other communications reduced to writing (including comment letters and e-mails) concerning the proposed rule change prepared or received by the self-regulatory organization.

(v) If after the proposed rule change is filed but before the Commission takes final action on it, the self-regulatory organization prepares or receives any correspondence or other communications reduced to writing (including comment letters) concerning the proposed rule change, copies of the communications must be filed as previously instructed.

*Exhibit 2:* Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

*Exhibit 3:* Copies of any systems change notifications in accordance with the Commission's Automation Review Policy statements. *See* Securities Exchange Act Release Nos. 27445 (November 16, 1989) [54 FR 48703] and 29185 (May 9, 1991) [56 FR 22490].

*F. What To Do if There Is an Amendment to the Proposed Rule Change*

If information on the Form 19b–6, the Certification, the Notice, or any applicable Exhibit is or becomes inaccurate or incomplete before the Commission takes action on the proposed rule change, the self-regulatory organization must file correcting amendments. Nine copies of amendments, including one manually signed copy, must be provided. Self-regulatory organizations may file amendments electronically in accordance with Commission instructions.

If an amendment alters the text of the proposed rule change as it appeared prior to the amendment, the amendment must mark the text, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of this requirement is to permit the staff to immediately identify any changes made to the previous version of the rule text.

*G. Where and How To File*

Nine copies of Form 19b–6 and all applicable exhibits must be filed with the Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–1001. The chief executive officer, general counsel, or other officer or director of the self-regulatory organization that exercises similar authority must manually sign at least one copy of the completed Form 19b–6. The Form 19b–6 also may be filed electronically with the Commission in compliance with such guidelines as may be published by the Commission from time to time. Please note that any information filed by the SRO requesting confidential treatment must be filed on paper with the Commission.

A registered clearing agency for which the Commission is not the appropriate regulatory agency must also file with its appropriate

regulatory agency three copies of the Form 19b–6, one of which shall be manually signed, including exhibits. The Municipal Securities Rulemaking Board must also file copies of the Form 19b–6, including exhibits, with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

**Form 19b–6 Certification**

The chief executive officer, general counsel, or other officer or director of the self-regulatory organization that exercises similar authority must review the Form 19b–6 (including the Notice and all required exhibits (See General Instructions)), complete the following certification, and sign the certification statement set forth below. The filing will not be considered filed with the Commission if the relevant items are not complete. This certification incorporates all statements made in the Notice.

Contact Information: Provide the name(s), telephone number(s) and e-mail address(es) of the person(s) on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change:

Name(s): lllllllllllllllll
Telephone number(s): llllllllll
E-mail address(es): lllllllllllll

The filing is being submitted pursuant to the following section of the Securities Exchange Act of 1934 (''Act'') (check box(es)).

b Section 19(b)(2)
b Section 19(b)(3)(A)
b Section 19(b)(3)(B)
b 19b–6(b)(5) Rule Filing

If the proposed rule change is effecting a minor change, or a change substantially the same as the rule of another self-regulatory organization that has previously been filed and approved, identify the rule and explain any differences between the proposed rule change and that rule. For the latter, give particular attention to differences between the conduct required to comply with the proposed rule change and that required to comply with the previously approved rule.

b Request for Accelerated Effectiveness

If the SRO is requesting accelerated effectiveness pursuant to Section 19(b)(2), provide a statement explaining why the self-regulatory organization believes there is good cause for the Commission to accelerate effectiveness.

lllllllllllllllllllll

I, [name, title, self-regulatory organization] certify that (please check all applicable items below):

b The filing provides an accurate statement of the authority and statutory basis for the proposed rule change.
b The filing does not violate, and is fully consistent with, the federal securities laws, including appropriate rules and regulations.
b The filing is submitted under the appropriate subsection of Section 19(b) and Rule 19b–6(b) as set forth in the Notice.
b The Board of Directors or other governing authority of the self-regulatory organization required under its constitution, articles of incorporation, bylaws, rules, or corresponding instruments has approved the proposed rule change.
b The Notice provides a clear and accurate statement of the proposed rule change's impact on competition, including whether the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.
b The Notice describes thoroughly the impact of the proposed rule change on various segments of the self-regulatory organization, including members, member constituencies, and non-members.
b The proposed rule change is not inconsistent with the existing rules of the self-regulatory organization, and the Notice describes how the proposed rule change relates to these rules.
b If applicable, the Notice contains an accurate summary of all comments received (solicited or unsolicited).
b The Notice contains the text of the proposed rule change, in the appropriate format required by the Commission.
b If the rule change is filed pursuant to Section 19(b)(3)(A) of the Act, appropriate procedures are in place for the effective surveillance of activity conducted pursuant to, and enforcement of, the proposed rule.
b If a proposed rule change to a trading rule is filed pursuant to Section 19(b)(3)(A) of the Act, the issuer is prepared to cease applying the proposed trading rule promptly upon Commission abrogation of the proposed rule change, and will not continue to implement the rule unless and until it is approved by the Commission pursuant to Section 19(b)(2) of the Exchange Act.
b If applicable, the issuer has agreed to issue the proposed new derivative products, and that issuer has agreed to file under Section 19(b) any required rule changes and submit any necessary documents to comply with the federal securities laws.
b The Notice is in the format required for publication by the **Federal Register**.
b The Notice identifies prior Commission orders or releases impacting the proposed rule change.

I understand that all statements made in the Notice are incorporated by reference into this Certification as representations of [name of self-regulatory organization] to the Commission. In addition, I have reviewed this Form 19b–6 Certification, the Notice, and any other applicable exhibits, and certify that they are accurate, complete, and consistent with the federal securities laws and other rules of [name of the self-regulatory organization].

Signature: lllllllllllllllll
Date: lllllllllllllllllll
(Signature of chief executive officer, general counsel, other officer or director) [1]

**Form 19b–6 Notice**

Securities and Exchange Commisison

(Release No. 34-.....; File No. SR-....)

Self-Regulatory Organization; [Notice of Filing of a] [Notice of Filing and Immediate Effectiveness of a] Proposed Rule Change by [Name of Self-Regulatory Organization] Relating to [brief description of proposed rule change]

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1),[1] and Rule 19b–6 under the Act, 17 CFR 240.19b–6, notice is hereby given that on [date [2]], the [name of self-regulatory organization] filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

*Section 19(b)(3)(A) Filings. If the proposed rule change is to take effect pursuant to Section 19(b)(3)(A) and Rule 19b–6(b), the following sentence, with appropriate footnote citation, should be included in the first paragraph:*

> [self-regulatory organization] filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–6(b) [applicable section] thereunder,[4] which renders the proposal effective upon filing with the Commission.

*For proposed rule changes filed pursuant to Section 19(b)(3)(A)(ii) and Rule 19b–6(b)(2), the sentence should read:*

[self-regulatory organization] has designated this proposal as one establishing or changing a due, fee, or other charge imposed by [self-regulatory organization] under Section 19(b)(3)(A)(ii) of the Act,[5] and Rule 19b–6 (b)(2)[6] thereunder, which renders the proposal effective upon filing with the Commission.

**I. Self-Regulatory Organization's Description of the Proposed Rule Change**

The [name of self-regulatory organization] has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. These statements are set forth in Sections A, B, and C below. Section D below sets forth the text of the proposed rule change.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Provide a statement of the purpose of the proposed rule. The statement must:

• *Describe the text of the proposed rule change in a sufficiently detailed and specific manner as to support a finding under Section*

[1] Print name and title.

[1] All cites should be in footnotes.

[2] To be completed by the Commission. This date will be the date on which the Commission receives the proposed rule change filing if the filing complies with all requirements of this Form 19b–6. *See* General Instructions.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] Include cite.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–6(b)(2).

*19(b) of the Act that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization;*

• *Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change will resolve those problems, the manner in which the proposed rule change will affect various persons (e.g., brokers, dealers, issuers, and investors), and any significant problems known to the self-regulatory organization that persons affected are likely to have in complying with the proposed rule change;*

• *Describe how the proposed rule change relates to existing rules of the self-regulatory organization;*

• *Describe how the proposed rule change relates to any applicable provisions of the federal securities laws and the rules and regulations thereunder;*

• *Identify rules of the self-regulatory organization and provisions of the federal securities laws that the self-regulatory organization reasonably expects the proposed rule change to affect and describe the anticipated effect of the proposed rule change on each applicable provision of the federal securities laws and applicable rules of the self-regulatory organization;*

• *Set forth the file numbers, release numbers, the Federal Register cites and other identifying information for prior filings relating to the affected rule and disclose any prior Commission order or release impacting the proposed rule change; and*

• *In the case of a registered clearing agency, also explain how the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which is it is responsible.*

2. Statutory Basis

Provide a statement of the proposed rule change's basis under the Act and the rules and regulations under the Act applicable to the self-regulatory organization. This statement must:

• *Explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to the self-regulatory organization;*

• *Reference and cite the specific section(s) of the Act and the rules; and*

• *Respond specifically to all significant arguments, raised by commenters or known to the self-regulatory organization, that the proposed rule change is inconsistent with those requirements.*

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The information required by this section must be sufficiently detailed and specific to support the premise that the proposed rule change does not impose any unnecessary or inappropriate burden on competition. In responding to this section, the self-regulatory organization must:

• *State whether the proposed rule change will impose or relieve any burden on, or promote, competition;*

• *Specify the particular categories of persons and kinds of businesses that will be burdened and the ways in which the proposed rule change will affect them;*

• *Set forth and respond in detail to written comments addressing significant impacts or burdens on competition; and*

• *Explain why any burden on competition is necessary or appropriate in furtherance of the purposes of the Act; or, if the self-regulatory organization does not believe that the burden on competition is significant, explain why.*

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

State whether or not comments were solicited or received. Summarize all comments received (solicited or unsolicited) and respond in detail to any significant issues raised about the proposed rule change.

If an issue is summarized and responded to in detail elsewhere in this notice, that response need not be duplicated if an appropriate cross-reference is made to the place where the response can be found.

*D. Text of the Proposed Rule Change*

Insert text of the proposed rule change, with deletions in brackets and additions underlined. If the self-regulatory organization is amending only part of the text of a lengthy rule, it may file only those portions of the text being amended if the filing is clearly understandable on its face.

**II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

*Section 19(b)(2) Rule Filing:* If the proposed rule change is to be considered by the Commission pursuant to section 19(b)(2), the following paragraph should be used:

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 publication if it finds a longer period to be appropriate and publishes its reasons for the finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

*Section 19(b)(3)(A) Filing.* If the proposed rule change is to take, or to be put into, effect pursuant to section 19(b)(3)(A) and Rule 19b–6(b), the following paragraph should be used:

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(insert appropriate subparagraph) of the Act and Rule 19b–6(b)[insert appropriate subparagraph] under the Act. At any time within 60 days of the date of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if the Commission believes that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission shall make no determination of a proposed rule change's impact on competition, efficiency, or capital formation for purposes of section 3(f) of the Act (15 U.S.C. 78c(f)) where the proposed rule change takes effect upon filing pursuant to paragraph (b) of Rule 19b–6 under the Act, and no inference of such a finding shall be made therefrom.

In addition, the self-regulatory organization must designate whether the proposed rule change:

(i) Is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule;

(ii) Establishes or changes a due, fee, or other charge;

(iii) Is concerned solely with administration of the self-regulatory organization;

(iv) Effects a change in an existing service of a registered clearing agency that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible, and (B) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service;

(v) Effects a minor change, or a change substantially the same as the rule of another self-regulatory organization that has previously been filed and approved pursuant to section 19(b)(2) of the Act, and (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; (C) does not unfairly discriminate between customers, issuers, and brokers or dealers; and (D) does not relate to a trading rule; or

(vi) Establishes or changes a trading rule, other than a trading rule that would make fundamental structural changes to the market, and that significantly affects the protection of investors or the public interest or imposes a significant burden on competition; provided that the self-regulatory organization certifies that it has established procedures for the effective surveillance of activity conducted pursuant to, and for enforcement of, such trading rule.

*Section 19(b)(3)(B) Filing.* If the proposed rule change is to take, or to be put into, effect pursuant to section 19(b)(3)(B) and Rule 19b–6(b), the following paragraph should be used:

The foregoing rule change has become effective pursuant to section 19(b)(3)(B) of the Act. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if the Commission believes that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

In addition, the self-regulatory organization must set forth the basis upon which the Commission should, in the view of the self-regulatory organization, determine that the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities and funds requires the proposed rule change to be put into effect summarily by the Commission.

**Note:** The Commission has the power under section 19(b)(3) of the Act to abrogate summarily within 60 days of its filing any proposed rule change that has taken effect

upon filing pursuant to section 19(b)(3)(A) of the Act or was put into effect summarily by the Commission pursuant to section 19(b)(3)(B) of the Act. In exercising its summary power under section 19(b)(3)(B), the Commission is required to make one of the findings described above but may not have a full opportunity to make a determination that the proposed rule change otherwise is consistent with the requirements of the Act and the rule and regulations thereunder. The Commission will generally exercise its summary power under section 19(b)(3)(B) only if the proposed rule change is promptly filed for consideration under section 19(b)(2) of the Act. A summary order under section 19(b)(3)(B) will be effective only until the Commission (i) approves the proposed rule change pursuant to section 19(b)(2) of the Act, (ii) institutes proceedings pursuant to section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change, or (iii) disapproves the proposed rule change pursuant to section 19(b)(2)(B) of the Act.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exhange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* 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 these filings will also be available for inspection and copying at the principal office of the [name of self-regulatory organization]. Electronically submitted comments will be posted on the Commission's Internet website (http://www.sec.gov). All submissions should refer to File No. [insert file number] and should be submitted by February 26, 2001.

This Notice was prepared by the [insert name of self-regulatory organization.] The Commission has not reviewed the substance of the proposed rule change prior to publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.30–3(a)(12)).

**[Insert name of Secretary],**

*Secretary.*

[FR Doc. 01–2731 Filed 2–2–01; 8:45 am]

**BILLING CODE 8010–01–U**

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 9

**[Notice No. 910]**

**RIN 1512–AA07**

## Realignment of the Alexander Valley and Dry Creek Valley Viticultural Areas (2000R–298P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the revision and realignment of a boundary line between the Alexander Valley (27 CFR 9.53) and the Dry Creek Valley (27 CFR 9.64) viticultural areas, located in northern Sonoma County, California. The petition proposes realigning approximately 410 acres, of which 50 acres are planted with grapes, from the Dry Creek Valley area to the Alexander Valley area.

**DATES:** Written comments must be received by April 6, 2001.

**ADDRESSES:** Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 910). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, room 6480, 650 Massachusetts Avenue, NW, Washington, DC 20226. Submit e-mail comments to: nprm@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ × 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See Public Participation section of this notice for alternative means of commenting.

**FOR FURTHER INFORMATION CONTACT:** N.A. Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA (415) 744–7011.

**SUPPLEMENTARY INFORMATION:**

### Background

With the issuance of T.D. ATF–187 on October 24, 1984, and T.D. ATF–129 on April 15, 1983, ATF formalized, respectively, the establishment of the Alexander Valley and Dry Creek Valley viticultural areas in Sonoma County, CA. The Alexander Valley viticultural area, T.D.–187, has been amended by T.D. ATF–233, August 26, 1986, T.D. ATF–272, May 13, 1988, and T.D. ATF–300, August 9, 1990.

### Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition from E. & J. Gallo Winery proposing the revision and realignment of a congruent boundary line between the Alexander Valley and the Dry Creek Valley viticultural areas, located in northern Sonoma County, California. The petition proposes realigning approximately 410 acres from the Dry Creek Valley area to the Alexander Valley area. The original petitions incorporated U.S.G.S. mapping section lines to define the boundary in this area. The petitioner uses geographic and climatic features to define the proposed line between these two areas.

### Proposed Amendment to Boundaries

The petitioner believes that a small section of the boundary between the established Alexander Valley viticultural area, 27 CFR 9.53, and Dry Creek Valley viticultural area, 27 CFR 9.64, should be modified. The petition states this boundary portion currently ignores distinctive geographic features, climatic differences and divides several vineyards.

The original boundary line in sections 4 and 5 of T.10 N., R.10 W. of the U.S.G.S. map, Geyserville Quadrangle of 1955, was defined primarily by the mapping section lines. According to the petitioner, at the time this boundary line was petitioned and approved, in 1983 for Dry Creek Valley and 1984 for Alexander Valley, there were no vineyards along this boundary section.

The petitioner provides a U.S.G.S. topographic map as evidence of a significant ridgeline along the proposed boundary line. This ridgeline is a watershed dividing point between the Dry Creek Valley and Alexander Valley viticultural areas. Currently both the Dutcher Creek and Gill Creek watersheds are in the Dry Creek Valley area but drain into different viticultural areas. The Gill Creek watershed, to the east of the ridgeline, drains east and crosses the boundary line into the Alexander Valley area. The Dutcher Creek Planning Watershed, to the west of the ridgeline, drains into Dry Creek,

staying in the Dry Creek Valley area. The proposed realignment would put the Gill Creek watershed into the Alexander Valley area, where it drains, and would keep the Dutcher Creek watershed within the Dry Creek Valley area.

The petitioner has provided a chart of growing degree days for five vineyards in the Dry Creek Valley and Alexander Valley areas. This chart indicates the Dry Creek Valley area is generally cooler than sites in the Alexander Valley area. The climate of the proposed realignment area more closely reflects the warmer Alexander Valley than the cooler Dry Creek Valley.

**Proposed Boundary Realignment**

The Alexander Valley and Dry Creek Valley viticultural areas are located in northern Sonoma County, California. The proposed realignment involves changing 410 acres, of which 50 acres are planted with grapes, from the Dry Creek Valley to the Alexander Valley viticultural area designation. The USGS map used for the proposed boundary realignment of the Alexander Valley and Dry Creek Valley areas is the Geyserville Quadrangle, California—Sonoma Co., 7.5 Minute Series, edition of 1955.

**Public Participation—Written Comments**

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8 ½″ × 11″ in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

**Regulatory Flexibility Act**

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

**Executive Order 12866**

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

**Drafting Information**

The principal author of this document is N. A. Sutton, Regulations Division (San Francisco), Bureau of Alcohol, Tobacco, and Firearms.

**List of Subjects in 27 CFR Part 9**

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine

**Authority and Issuance**

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph 1.** The authority citation for Part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Section 9.53 is amended by revising paragraph (c)(6), removing paragraph (c)(7), and redesignating paragraphs (c)(8) through (c)(44) as (c)(7) through (c)(43) to read as follows:

### § 9.53 Alexander Valley

* * * * *

(a) *Boundaries.* * * *

(6) Then southeasterly in a straight line approximately 11,000 feet (closely following the ridge line) to the northwest corner of Section 10, T. 10 N., R.10 W. on the Geyserville Quadrangle map;

* * * * *

**Par. 3.** Section 9.64 is amended by revising paragraphs (c) introductory text and (c)(1) to read as follows:

### § 9.64 Dry Creek Valley

* * * * *

(c) *Boundaries.* The Dry Creek Valley viticultural area is located in north central Sonoma County, California. From the beginning point lying at the intersection of latitude line 38 degrees 45 minutes and the northwest corner of Section 5, T. 10 N., R. 10 W. on the ''Geyserville Quadrangle'' map, the boundary runs—

(1) Southeasterly in a straight line approximately 11,000 feet (closely following the ridge line) to the northeast corner of Section 9, T. 10 N., R. 10 W.;

* * * * *

Signed: January 29, 2001.

**Bradley A. Buckles,**

*Director.*

[FR Doc. 01–2962 Filed 2–2–01; 8:45 am]

BILLING CODE 4810–31–P

## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

## 40 CFR Part 1610

## Attorney Misconduct, Sequestration of Witnesses, and Exclusion of Counsel

**AGENCY:** Chemical Safety and Hazard Investigation Board.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth new proposed regulations of the Chemical Safety and Hazard Investigation Board (''CSB'') concerning sanctions for repeated attorney misconduct, and the sequestration of witnesses and exclusion of counsel in depositions

conducted under subpoena in CSB investigations.

**DATES:** Submit comments on or before March 7, 2001.

**ADDRESSES:** Address all comments concerning this proposed rule to Raymond C. Porfiri, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., 4th Floor, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Raymond C. Porfiri (202) 261–7600.

**SUPPLEMENTARY INFORMATION:** The Chemical Safety and Hazard Investigation Board (''CSB'' or ''Board'') is mandated by law to ''Investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release (within its jurisdiction) resulting in a fatality, serious injury or substantial property damages.'' 42 U.S.C. 7412(r)(6)(C)(i). The Board has developed practices and procedures concerning witness representation in CSB investigations at 40 CFR 1610.1 (66 FR 1050, Jan. 5, 2001).

These proposed rules amplify those rules. Because they provide for the possibility of suspension of attorneys from practice before the Board in certain circumstances, the Board has determined that the rules and the procedures therein should be published for comment as proposed rules.

New § 1610.2 provides for sanctions against attorneys who are involved in repeated acts of misconduct and for hearing procedures for issuing suspensions from practice before the Board.

New § 1610.3 provides for the sequestration of witnesses in investigative proceedings and for the exclusion of attorneys representing multiple witnesses in investigations from witness depositions where the person conducting the deposition, after consultation with the Office of General Counsel, determines that the CSB has concrete evidence that the presence of such attorney would obstruct or impede the investigation. This ''concrete evidence'' standard meets the test set forth by the court in *Professional Reactor Operator Society* v. *Nuclear Regulatory Commission,* 939 F.2d 1047 (D.C. Cir 1991). *See also SEC* v. *Csapo,* 533 F.2d 7 (D.C. Cir. 1976).

## Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this proposed regulation and certifies that it will not have a significant economic impact on a substantial number of small entities.

## Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48.

Dated: January 26, 2001.

**Christopher W. Warner,**

*General Counsel.*

## List of Subjects in 40 CFR Part 1610

Administrative practice and procedure; Investigations.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to amend 40 CFR part 1610 as follows:

# PART 1610—ADMINISTRATIVE INVESTIGATIONS

1. The authority citation for part 1610 continues to read as follows:

**Authority:** 42 U.S.C. 7412(r)(6)(C)(i), 7412(r)(6)(L), 7412(r)(6)(N).

2. Add §§ 1610.2 and 1610.3 to read as follows:

### § 1610.2 Repeated attorney misconduct, sanctions, hearings.

(a) If an attorney who has been sanctioned by the Board for disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of a deposition under § 1610.1(a)(5) is sanctioned again by the Board in a subsequent deposition or investigation, the Board, after offering the attorney an opportunity to be heard, may reprimand, censure the attorney, or suspend the attorney from further practice before the Board for such period of time as the Board deems advisable.

(b) A reprimand or a censure shall be ordered with grounds stated on the record of the proceeding. A suspension shall be in writing, shall state the grounds on which it is based, and shall advise the person suspended of the right to appeal.

(c) An attorney suspended pursuant to this section may within ten (10) days after issuance of the order file an appeal with the Board. The appeal shall be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. If necessary for a full and fair consideration of the facts, the Board as a whole may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. Such presiding officer may be an attorney who is a Member of the Board or is employed in the Office of General Counsel, or an administrative law judge detailed from another agency pursuant to 5 U.S.C. 3344. If the Board refers the matter to a presiding officer, unless the Board provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. Such hearing shall commence as soon as possible. If no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Board, as appropriate, shall notify the state bar(s) to which the attorney is admitted. Such notification shall include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Board.

### § 1610.3 Sequestration of witnesses and exclusion of counsel.

(a) All witnesses compelled by subpoena to submit to CSB depositions shall be sequestered unless the official conducting the depositions permits otherwise.

(b) Any witness compelled by subpoena to appear at a deposition during a CSB investigation may be accompanied, represented, and advised by an attorney in good standing of his or her choice, pursuant to § 1610.1. However, when the CSB official conducting the investigation determines, after consultation with the Office of General Counsel, that the CSB has concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection, the CSB official may prohibit that counsel from being present during the deposition.

(c) The deposing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section, and the witness' counsel, a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after exclusion, must explain the basis for the counsel's exclusion. This statement must also advise the witness of the witness' right to appeal the exclusion decision and obtain an automatic stay of the effectiveness of the subpoena by filing a motion to quash the subpoena

with the Board within five days of receipt of this written statement.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section, a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Board. The filing of the motion to quash will stay the effectiveness of the subpoena pending the Board's decision on the motion.

(e) If a witness' counsel is excluded under paragraph (b) of this section, the deposition may, at the witness' request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The deposition may also be rescheduled to a subsequent date established by the CSB, although the deposition shall not be rescheduled by the CSB to a date that precedes the expiration of the time provided in paragraph (d) of this section for appeal of the exclusion of counsel, unless the witness consents to an earlier date.

[FR Doc. 01–2902 Filed 2–2–01; 8:45 am]

BILLING CODE 6350–01–U

# Notices

Federal Register
Vol. 66, No. 24
Monday, February 5, 2001

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

### Natural Resources Conservation Service

### Availability of Proposed Changes to Conservation Practice Standards, Field Office Technical Guide, North Carolina

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of Availability of proposed changes to conservation practice standards in Section IV of the Field Office Technical Guide (FOTG) of NRCS in North Carolina for review and comment.

**SUMMARY:** It is the intention of NRCS in North Carolina to issue revised conservation practice standards in Section IV of the FOTG for the following practices:

Animal Mortality Freezer (774)
Closure of Abandoned Waste Facility (360)
Conservation Crop Rotation (328)
Contour Farming (330)
Cover and Green Manure Crop (340)
Cross-Slope Farming (Interim) (733)
Grassed Waterway (412)
Incinerator (769)
Irrigation System, Trickle (441)
Long Term No-Till (778)
Pond Sealing and Lining, Flexible Membrane (521–A)
Shallow Water Management for Wildlife (646)
Waste Storage Facility (313)
Well (642)
Wetland Restoration (657)

**DATES:** Comments on this notice must be received on or before March 7, 2001.

**ADDRESSES:** All comments concerning the proposed conservation practice standards changes should be addressed to: Mary Combs, State Conservationist, NRCS, 4405 Bland Road, Suite 205, Raleigh, North Carolina 27609. Copies of these standards will be made available upon written request.

Dated: January 26, 2001.

**Lane C. Price,**

*Assistant State Conservationist for Programs, Natural Resources Conservation Service, Raleigh, North Carolina 27609.*

[FR Doc. 01–2976 Filed 2–2–01; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF COMMERCE

**[I.D. 013100C]**

### Submission For OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marine Mammal Stranding Report/Marine Mammal Rehabilitation Disposition Report.

Form Number(s): NOAA Form 89-864.

OMB Approval Number: 0648-0178.

Type of Request: Regular submission.

Burden Hours: 1,600.

Number of Respondents: 400.

Average Hours Per Response: 20 minutes.

Needs and Uses: The marine mammal stranding report provides information on strandings so that NMFS can compile and analyze by region the species, numbers, conditions, and causes of illnesses and deaths in stranded marine mammals. The Agency requires this information to fulfill its management responsibilities under the Marine Mammal Protection Act (16 U.S.C. 1421a). The Agency is also responsible for the welfare of marine mammals while in rehabilitation status. The data from the marine mammal rehabilitation disposition reports are required for monitoring and tracking of marine mammals held at various NMFS-authorized facilities. The information is submitted primarily by volunteer members of the marine mammal stranding networks who are authorized by the Agency.

Affected Public: Not-for-profit institutions, business or other for-profit, and state, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Forms Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 29, 2001.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–2959 Filed 2–2–01; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### Census Bureau

### Feasibility Study for Conducting the American Community Survey in Puerto Rico

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paper work and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed 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 April 6, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Don Fischer, U. S. Census Bureau, Demographic Surveys Division, Washington, DC 20233. His telephone number is (301) 457–8048.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The Census Bureau plans to conduct a feasibility study to assess the operational implications of using the American Community Survey data collection methods in Puerto Rico. The American Community Survey, which the Census Bureau initiated in November 1995, is an ongoing, continuous monthly household survey that provides data which were historically collected via the decennial census long-form questionnaire. We are currently in the comparison phase (1999–2002) of the American Community Survey in which we are comparing American Community Survey data with data collected during Census 2000.

In 2003, the Census Bureau plans to begin conducting the American Community Survey in every county in the United States and also in Puerto Rico. This feasibility study is necessary to determine whether the current data collection procedures are appropriate for use in Puerto Rico.

The current design of the American Community Survey relies on three methods of data collection: mailout/mailback, computer-assisted telephone interviewing (CATI), and computer-assisted personal interviewing (CAPI). During Census 2000, the Census Bureau used update/leave/mailback methods in Puerto Rico. This feasibility study will allow us to determine whether we can successfully mail questionnaires to households in Puerto Rico and whether we can conduct CATI and CAPI interviews with households that do not return the mailed form. In addition, we will be able to estimate CATI and CAPI work loads in Puerto Rico in 2003 based on the mail response rates in the study and our ability to obtain telephone numbers for use in the CATI operation.

## II. Method of Collection

The Census Bureau will mail a modified and translated version of the American Community Survey questionnaire to approximately 10,000 households in Puerto Rico. For households that do not return a questionnaire, the Census Bureau staff will attempt to conduct interviews by CATI or CAPI.

The Census Bureau staff will provide telephone questionnaire assistance.

## III. Data

*OMB Number:* Not available.
*Form Number:* ACS–1(2000) PR.
*Type of Review:* Regular.
*Affected Public:* Individuals and households.
*Estimated Number of Respondents:* During the period of July 2001 through October 2001, we plan to contact 10,000 households for this feasibility study.
*Estimated Time Per Response:* Estimates are 38 minutes per household.
*Estimated Total Annual Burden Hours:* The estimate is an annual average of 6,333 burden hours.
*Estimated Total Annual Cost:* Except for their time, there is no cost to respondents.
*Respondent Obligation:* Mandatory.
*Authority:* Title 13, United States Code, Section 182.

## 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 collections techniques or others forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for the OMB approval of this information collection; they also will become a matter of public record.

Dated: January 30, 2001.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–2943 Filed 2–2–01; 8:45 am]

BILLING CODE 3510–07–P

---

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 7–2001]**

### Foreign-Trade Zone 129—Bellingham, Washington; Proposed Foreign-Trade Subzone; ARCO Products Company (Oil Refinery Complex); Bellingham, Washington, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of Bellingham, grantee of FTZ 129, requesting special-purpose subzone status for the oil refinery complex of Atlantic Richfield Company (ARCO), a wholly-owned subsidiary of BP America, located in the Bellingham, Washington, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 25, 2001.

The ARCO ''Cherry Point'' refinery complex (223,000 BPD refinery, 66 tanks with over 7 million barrel capacity, 3,600 acres) is located at 4519 Grandview Road, near Cherry Point (Whatcom County), Washington, some 15 miles northwest of Bellingham. The refinery (440 employees) is used to produce fuels and petrochemical feedstocks. Fuel products include gasoline, jet fuel, distillates, residual fuels, naphthas and motor fuel blendstocks. Petrochemical feedstocks and refinery by-products include liquified petroleum gases, petroleum coke and sulfur. Some 8 percent of the crude oil (nearly all of inputs) is sourced abroad. The application also indicates that the company may in the future import under FTZ procedures some naphthas, virgin gas oil, natural gas condensate, and motor fuel blendstocks.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting certain incoming foreign crude oil in non-privileged foreign status. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

The closing period for their receipt is April 6, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 23, 2001).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port of Bellingham, Harbor Center Building, 1801 Roeder Avenue, Bellingham, Washington 98227–1677

Office of the Executive Secretary, Foreign-Trade Zones Board, Room

4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: January 25, 2001.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 01–2897 Filed 2–2–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration, U.S. and Foreign Commercial Service; Application for the President's ''E'' Award and ''E Star'' Awards for Export Expansion

**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 the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(2)(A)).

**DATES:** Written comments must be submitted on or before April 6, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Mclayton@doc.gov.*)

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to: Jesse Leggoe, Room 1107, Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; phone (202) 482–3940, fax (202) 482–0729.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The President's ''E'' Award for Excellence in Exporting is our nation's highest award to honor American exporters. ''E'' Awards recognize firms and organizations for their competitive achievements in world markets, as well as the benefits of their success to the U.S. economy. The President's ''E Star'' Award recognizes the sustained superior international marketing performance of ''E'' Award winners.

#### II. Method of Collection

An application form is the vehicle designed to determine eligibility for the award within established criteria. The completed application is submitted to the appropriate U.S. Department of Commerce Export Assistance Center for review and endorsement, and then forwarded to the Office of Domestic Operations in the U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, Washington, D.C., for processing.

#### III. Data

*OMB Number:* 0625–0065.

*Form Number:* ITA 725P.

*Type of Review:* Regular submission.

*Affected Public:* U.S. firms and organizations and American subsidiaries of foreign-owned or controlled corporations.

*Estimated Number of Respondents:* 60.

*Estimated Time per Response:* 27.4 hours.

*Estimated Total Annual Burden Hours:* 1644.

*Estimated Total Annual Cost:* $68,000.

#### IV. Requested 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: January 30, 2001.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–2944 Filed 2–2–01; 8:45 am]

BILLING CODE 3510–FP–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]**

### Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, and Notice of Intent To Revoke Orders in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary of antidumping duty administrative reviews, partial rescission of administrative reviews, and notice of intent to revoke orders in part.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 56 manufacturers/exporters. The period of review is May 1, 1999, through December 31, 1999, for certain orders and May 1, 1999, through April 30, 2000, for other orders.

We have preliminarily determined that sales have been made below normal value by various companies subject to these reviews. If these preliminary results are adopted in our final results of administrative reviews, we will instruct U.S. Customs to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** February 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** Please contact the appropriate case analysts for the various respondent firms as listed below, at Import Administration, International Trade Administration, U.S. Department of

Commerce, Washington, DC 20230; telephone: (202) 482–4733.

*France*

Edythe Artman (SNFA), George Callen (SNR), Lyn Johnson (Alfateam—Belgium, Alfa-Team—Germany, Bearing Discount Int.—Germany, Motion Bearings—Singapore, Yoo Shin Commercial Co—South Korea, Rodamientos Rovi—Venezuela, Rovi-Valencia—Venezuela, Rovi-Marcay—Venezuela, RIRSA—Mexico, DCD—Northern Ireland, EuroLatin Ex. Services—United Kingdom (collectively, Resellers)), Robin Gray, or Richard Rimlinger.

*Germany*

George Callen (Cerobear), Hermes Pinilla (INA), Thomas Schauer (Torrington Nadellager), Lyn Johnson (Resellers), Robin Gray, or Richard Rimlinger.

*Italy*

Lyn Johnson (Resellers) or Robin Gray.

*Japan*

David Dirstine (NSK), Thomas Schauer (NTN), Lyn Johnson (Koyo), Robin Gray, or Richard Rimlinger.

*Sweden*

Lyn Johnson (Resellers) or Robin Gray.

*United Kingdom*

Thomas Schauer (Timken, RHP/NSK), Edythe Artman (SNFA), Robin Gray, or Richard Rimlinger.

**SUPPLEMENTARY INFORMATION:**

## The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2000).

## Background

On May 15, 1989, the Department published in the **Federal Register** (54 FR 20909) the antidumping duty orders on ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. Specifically, these orders cover BBs, CRBs, and SPBs from France, Germany, and Japan, BBs and CRBs from Italy, Sweden, and the United Kingdom, and BBs from Romania and Singapore. On July 7, 2000, in accordance with 19 CFR 351.213(b), we published a notice of initiation of administrative reviews of these orders (65 FR 41942).

On June 28, 2000, the International Trade Commission, pursuant to section 751(c) of the Act, determined that revocation of the orders on BBs from Romania and Sweden, CRBs from France, Germany, Italy, Japan, Sweden and the United Kingdom, and SPBs from Germany and Japan would not be likely to lead to continuation or recurrence of material injury. As a result of these determinations, the Department revoked the antidumping duty orders in question. The Department published the revocation notice for these orders in the **Federal Register** on July 11, 2000, with an effective date of January 1, 2000 (65 FR 42667). Therefore, for the revoked orders, the period covered by these administrative reviews is May 1, 1999, through December 31, 1999. For the remaining orders subject to these administrative reviews the period covered is May 1, 1999, through April 30, 2000. The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Subsequent to the initiation of these reviews, we received timely withdrawals of the requests we had received for review of SKF (France), SKF (Germany), FAG (Germany), SNR (Germany), FAG (Italy), SOMECAT (Italy), Inoue Jikuuke Kogyo (Japan), Izumoto Seiko Co. (Japan), Koyo Romania (Romania), NMB/Pelmec (Singapore), SKF (Sweden), Barden (U.K.), SNR (U.K.), RHP–NSK (U.K.) with respect to CRBs only, and SNR (France) with respect to BBs only. We also received a timely withdrawal of the request that we had received for review of Muro Corporation (Japan) with respect to BBs only. Because there were no other requests for review of the above-named firms, we are rescinding the reviews with respect to these companies in accordance with 19 CFR 351.213(d).

## Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) and constitute the following merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all CRBs (including split CRBs) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings, Mounted and Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends.

Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a listing of scope determinations which pertain to the orders, see the ''Scope Determinations Memorandum'' (Scope Memo) from the Antifriction Bearings Team to Laurie Parkhill, dated January

30, 2001, and hereby adopted by this notice. The Scope Memo is in the Central Records Unit (CRU), Main Commerce Building, Room B–099, in the General Issues record (A–100–001) for the 99/00 reviews.

Although the HTSUS item numbers above are provided for convenience and customs purposes, written descriptions of the scope of these proceedings remain dispositive.

**Verification**

As provided in section 782(i) of the Act, we verified information provided by certain respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which are on file in the CRU, Room B–099.

**Use of Facts Available**

In accordance with section 776(a) of the Act, we preliminarily determine that the use of facts available as the basis for the weighted-average dumping margin is appropriate for Torrington Nadellager (Germany) and Sapporo Precision Inc. (Japan). We also preliminarily determine that the use of facts available is appropriate with respect to five of the Resellers (Alfateam-Belgium, Alfa-Team-Germany, Motion Bearings, Yoo Shin Commercial Company Ltd., and DCD) in the reviews of certain orders covering France, Germany, Italy, and Sweden. None of the above firms responded to our antidumping questionnaire fully (see the analysis memoranda to the file for these firms dated January 30, 2001) and, consequently, we find that they have not provided ''information that has been requested by the administering authority'' (Section 776(a)(1) of the Act).

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. This is necessary because the above firms have not acted to the best of their ability in providing us with relevant information which is under their control. As adverse facts available for these firms, we have applied the highest rate we have calculated for any companies under review in any segment of the relevant proceedings (*i.e.,* BBs and CRBs from Germany and BBs from France, Italy, Sweden, and Japan). We have selected these rates because they are sufficiently high as to reasonably assure that the firms named above do not obtain a more favorable result by failing to cooperate. Specifically, these rates are 68.18 percent for BBs from France, 70.41 percent for BBs from Germany, 61.60 percent for CRBs from Germany, 68.29 percent for BBs from Italy, 13.55 percent for BBs from Sweden, and 73.55 percent for BBs from Japan.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding or from another company in the same proceeding constitutes secondary information. The Statement of Administrative Action accompanying the URAA, H.R. Doc. 103–316, at 870 (1994) (SAA), provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870. As explained in *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) *(Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan)* to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812 (February 22, 1996), where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Further, in accordance with *F.LII De Cecco Di Filippo Fara S. Martino S.p.A.* v. *United States,* No. 99–1318 (CAFC June 16, 2000), we also examined whether information on the record would support the selected rates as reasonable facts available.

We find that the above rates that we are using for these preliminary results do have probative value. We compared the selected margins to margins calculated on individual sales of the merchandise in question made by either companies covered by the instant reviews or companies covered by the previous administrative review. We found a substantial number of sales, made in the ordinary course of trade and in commercial quantities, with dumping margins near or exceeding the rates under consideration. (The details of this analysis are contained in the proprietary versions of the analysis memoranda for the covered firms dated January 30, 2001.) This evidence supports an inference that the selected rates might reflect the actual dumping margins for the firms in question.

Furthermore, there is no information on the record that demonstrates that the rates selected are inappropriate total adverse facts-available rates for the companies in question. On the contrary, our existing record supports the use of these rates as the best indications of the export prices and dumping margins for these firms as explained in our January 30, 2001, memoranda. Therefore, we consider the selected rates to have probative value with respect to the firms in question in these reviews and to reflect appropriate adverse inferences.

In accordance with section 776(a) of the Act, we have also applied partial facts available to NTN (Japan). NTN did not provide information concerning downstream sales for two affiliated resellers as we requested in our supplemental questionnaire. For sales made by these affiliated resellers, we preliminarily determine that NTN did not act to the best of its ability to attempt to report the downstream sales. In the case of one of the resellers, NTN claimed it did not provide the data because the amount of sales by that affiliate was small. Thus, there was no apparent attempt to obtain the data from the affiliated reseller. In the case of the other reseller, NTN stated that the affiliate was not able to provide the requested information.

Because the reason NTN's affiliate did not provide the data is proprietary, please see the NTN preliminary analysis memorandum dated January 30, 2001, for more information. However, we find

that NTN did not explain why its affiliate could not submit the requested information or whether additional time to respond would have allowed the affiliate to provide the information. Therefore, because we have preliminarily determined that NTN did not act to the best of its ability, we have used adverse facts available for sales made by these two affiliates, pursuant to section 776(b) of the Act. As adverse facts available, for each model sold to these affiliates, we have replaced the price to the affiliated party with the highest home-market price of a product which NTN sold to other customers (*e.g.,* unaffiliated customers) for the same model and at the same level of trade during the period of review. For models sold by these two affiliates that NTN did not sell to other customers, we have increased the net home-market price. To do so, we first calculated a ratio based on the weighted-average difference in price between the highest price to other customers and the price to these affiliated resellers for all models which were sold to both types of customers. We then applied this ratio to the prices of models sold only to these affiliates to make an upward adjustment to those prices. This is the same methodology we used in applying facts available to NTN in the May 1, 1998, through April 30, 1999, administrative reviews (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part,* 65 FR 49219 (August 11, 2000) (*AFBs 10*), and accompanying Issues and Decision Memorandum at Comment 3).

Finally, pursuant to section 776(a)(2) of the Act, we have applied partial facts available to Cerobear for its sales of BBs from Germany. Cerobear did not provide constructed-value information for cases in which there were no contemporaneous sales of particular models sold in the home market to match with identical or similar models it sold to the United States. We requested that Cerobear provide such information so that we can use it for the final results of this review. For these preliminary results, we have used as facts available the weighted-average of the non-*de minimis* margins we calculated for Cerobear's sales of BBs to the United States where we were able to match U.S. price to either home-market price or constructed value.

**Intent To Revoke and Intent Not To Revoke**

On May 31, 2000, three of the companies taking part in these reviews submitted requests for the revocation, in part, of an antidumping duty order. SNFA France requested the revocation of the order covering CRBs from France as it pertains to its sales of these bearings. SNFA U.K. requested the revocation of the order covering BBs from the United Kingdom as it pertains to its sales of these bearings. Finally, SNR requested the revocation of the order on BBs from France as it pertains to its sales of these bearings.

Under section 751 of the Act, the Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth under 19 CFR 351.222. Under subsection 351.222(b), the Department may revoke an antidumping duty order in part if it concludes that: (i) The company in question has sold the subject merchandise at not less than normal value for a period of at least three consecutive years; (ii) it is not likely that the company will in the future sell the subject merchandise at less than normal value; and (iii) the company has agreed to immediate reinstatement in the order if the Department concludes that the company, subject to the revocation, sold the subject merchandise at less than normal value. Subsection 351.222(b)(3) states that, in the case of an exporter that is not the producer of subject merchandise, the Department normally will revoke an order in part under subsection 351.222(b)(2) only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

A request for revocation of an order in part must be accompanied by three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (1) The company's certification that it sold the subject merchandise at not less than normal value during the current review period and that, in the future, it will not sell at less than normal value; (2) the company's certification that, during each of the three years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (3) the agreement to reinstatement in the order if the Department concludes that the company, subsequent to revocation, has sold the subject merchandise at less than normal value. See 19 CFR 351.222(e)(1).

The requests from SNFA U.K. and SNR meet the criteria under subsection 351.222(e)(1). However, the results of our preliminary margin calculations show that both firms had U.S. sales at less than normal value during the current review period (see rates below). Thus, these companies do not meet the criterion under subsection 351.222(b)(2)(i) and we preliminarily determine not to revoke them from the order covering BBs from the United Kingdom and from France.

The request from SNFA France meets all of the criteria under subsection 351.222(e)(1). With regard to the criteria of subsection 351.222(b)(2), our preliminary margin calculations show that this firm sold CRBs at not less than normal value during the current review period (see rate below). In addition, it sold CRBs at not less than normal value in the two previous reviews. See *AFBs 10* and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden and the United Kingdom; Finals Results of Antidumping Duty Administrative Reviews and Revocation or Orders in Part,* 64 FR 35590 (July 1, 1999). Thus, we preliminarily find that SNFA France had zero or *de minimis* dumping margins for three consecutive reviews in which it sold in commercial quantities. Also, we preliminarily determine that dumping is not likely to resume based upon the three consecutive reviews of zero or *de minimis* margins and in the absence of any other evidence on likelihood.

Therefore, we preliminarily intend to revoke the antidumping duty order covering CRBs from France as it pertains to the sales of these bearings by SNFA France.

If these preliminary findings are affirmed in our final results, we will revoke this order in part for SNFA France and, in accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any of the merchandise in question that is entered or withdrawn from warehouse for consumption on or after May 1, 2000, and will instruct Customs to refund any cash deposits for such entries.

**Export Price and Constructed Export Price**

For the price to the United States, we used export price or constructed export price (CEP) as defined in sections 772(a)

and (b) of the Act, as appropriate. Due to the extremely large volume of transactions that occurred during the period of review and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Act. When a firm made more than 2,000 CEP sales transactions to the United States for merchandise subject to a particular order, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks are as follows: May 2–8, 1999; August 8–14, 1999; September 5–11, 1999; October 31–November 6, 1999; January 2–8, 2000; and April 9–15, 2000. We reviewed all export-price sales transactions during the period of review.

We calculated export price and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA, at 823–824, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, indirect selling expenses, and repacking expenses in the United States. When appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly, except where we applied the special rule provided in section 772(e) of the Act (see below). Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.,* parts of bearings that were imported by U.S. affiliates of foreign exporters and then further processed into other products which were then sold to unaffiliated parties, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied to all firms that added value in the United States.

Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser. Based on this analysis, we determined that the estimated value added in the United States by all firms accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. (See 19 CFR 351.402(c) for an explanation of our practice on this issue.) Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise. Also, for the companies in question, we determine that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of these sales are appropriate. Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

No other adjustments to export price or CEP were claimed or allowed.

**Normal Value**

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined, with the exception of Timken Aerospace U.K. Ltd., that the quantity of foreign like product sold by all respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like products were first sold for consumption in the exporting country.

With respect to Timken Aerospace U.K. Ltd., we found that, although its home market was viable under section 773(a)(1) of the Act, the firm made no sales of foreign like product in its home market that we were able to compare to its U.S. sales. Therefore, we based normal value on constructed value.

Due to the extremely large number of transactions that occurred during the period of review and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate normal value in accordance with section 777A of the Act. When a firm had more than 2,000 home-market sales transactions on an order-specific basis, we used sales in sample months that corresponded to the sample weeks that we selected for U.S. CEP sales, sales in the month prior to the period of review, and sales in the month following the period of review. The sample months were April, May, August, September, and November of 1999 and January, April, and May of 2000.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.,* at prices comparable to prices at which the firm sold identical merchandise to unaffiliated customers.

Because we disregarded below-cost sales in accordance with section 773(b) of the Act in the last completed review, *AFBs 10,* with respect to SNR (BBs), Koyo (BBs), NSK (BBs and CRBs), and NTN (all), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value in these reviews may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted COP investigations of sales by these firms in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home-market sales and COP information provided by each respondent in its questionnaire responses. We did not conduct a COP analysis regarding merchandise subject to an antidumping duty order in instances where a respondent reported

no U.S. sales or shipments of merchandise subject to that order.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of AFBs were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the period of review, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to all of the above-mentioned companies and indicated merchandise except where there were no sales or shipments subject to review.

We compared U.S. sales with sales of the foreign like product in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings which are the foreign like product that are the same in the following physical characteristics: Load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home-market prices were based on the packed, ex-factory or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to export price, we made COS adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made COS adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in export-price and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the export price or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. (See *Level of Trade* section below.)

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for COS differences and level-of-trade differences. For comparisons to export price, we made COS adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made COS adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in export-price and CEP comparisons.

When possible, we calculated constructed value at the same level of trade as the export price or CEP. If constructed value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act. (See *Level of Trade* section below.)

**Level of Trade**

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either export price or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the home market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home-market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales were at a different level of trade from that of a U.S. sale and the difference affected price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

For a company-specific description of our level-of-trade analysis for these preliminary results, see Memorandum to Laurie Parkhill from Antifriction Bearings Team regarding Level of Trade, dated January 30, 2001, on file in the CRU, Room B–099.

**Preliminary Results of Reviews**

As a result of our reviews, we preliminarily determine the following weighted-average dumping margins (in percent) for the period May 1, 1999, through April 30, 2000 (for BBs), and for the period May 1, 1999, through December 31, 1999 (for CRBs and SPBs):

| Company | Ball | Cylindrical | Spherical plain |
|---|---|---|---|
| **FRANCE** | | | |
| SNFA | (3) | 0.00 | ..... |
| SNR | 2.92 | (3) | ..... |
| Alfateam | 66.18 | (3) | ..... |
| Alfa-Team | 66.18 | (3) | ..... |
| Bearing Discount Int | (2) | (3) | ..... |
| Motion Bearings | 66.18 | (3) | ..... |
| Yoo Shin Commercial Co | 66.18 | (3) | ..... |
| Rodamientos Rovi | (2) | (3) | ..... |
| Rovi-Valencia | (2) | (3) | ..... |
| Rovi-Marcay | (2) | (3) | ..... |
| RIRSA | (2) | (3) | ..... |
| DCD | 66.18 | (3) | ..... |
| EuroLatin Ex. Services | (2) | (3) | ..... |
| **GERMANY** | | | |
| Cerobar GmbH | 0.07 | 0.00 | (3) |
| INA | (1) | 0.10 | (1) |
| Torrington | 70.41 | 61.60 | (3) |
| Alfateam | 70.41 | 61.60 | (3) |
| Alfa-Team | 70.41 | 61.60 | (3) |
| Bearing Discount Int | (2) | (2) | (3) |
| Motion Bearings | 70.41 | 61.60 | (3) |
| Yoo Shin Commercial Co | 70.41 | 61.60 | (3) |
| Rodamientos Rovi | (2) | (2) | (3) |
| Rovi-Valencia | (2) | (2) | (3) |
| Rovi-Marcay | (2) | (2) | (3) |
| RIRSA | (2) | (2) | (3) |
| DCD | 70.41 | 61.60 | (3) |
| EuroLatin Ex. Services | (2) | (2) | (3) |
| **ITALY** | | | |
| Alfateam | 68.29 | ..... | ..... |
| Alfa-Team | 68.29 | ..... | ..... |
| Bearing Discount Int | (2) | ..... | ..... |
| Motion Bearings | 68.29 | ..... | ..... |
| Yoo Shin Commercial Co | 68.29 | ..... | ..... |
| Rodamientos Rovi | (2) | ..... | ..... |
| Rovi-Valencia | (2) | ..... | ..... |
| Rovi-Marcay | (2) | ..... | ..... |
| RIRSA | (2) | ..... | ..... |
| DCD | 68.29 | ..... | ..... |
| EuroLatin Ex. Services | (2) | ..... | ..... |
| **JAPAN** | | | |
| Koyo | 10.15 | 6.21 | 0.00 |
| NSK Ltd. | 4.65 | 5.89 | (3) |
| NTN | 15.98 | 15.42 | 3.07 |
| Sapporo | 73.55 | (3) | (3) |
| **SWEDEN** | | | |
| Alfateam | 13.55 | ..... | ..... |
| Alfa-Team | 13.55 | ..... | ..... |
| Bearing Discount Int | (2) | ..... | ..... |
| Motion Bearings | 13.55 | ..... | ..... |
| Yoo Shin Commercial Co | 13.55 | ..... | ..... |
| Rodamientos Rovi | (2) | ..... | ..... |
| Rovi-Valencia | (2) | ..... | ..... |
| Rovi-Marcay | (2) | ..... | ..... |
| RIRSA | (2) | ..... | ..... |
| DCD | 13.55 | ..... | ..... |
| EuroLatin Ex. Services | (2) | ..... | ..... |
| **UNITED KINGDOM** | | | |
| NSK/RHP Bearings | 15.70 | ..... | ..... |
| SNFA | 2.21 | ..... | ..... |
| Timken | 1.11 | ..... | ..... |

[1] No shipments or sales subject to this review. The deposit rate remains unchanged from the last relevant segment of the proceeding in which the firm had shipments/sales.

[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] No request for review under section 751(a) of the Act.

Any interested party may request a hearing within 21 days of the date of publication of this notice. A general-issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce Department building:

| Case | Date | Time | Room No. |
|---|---|---|---|
| General Issues | March 15, 2001 | 9:00 am | B–841A |
| Sweden | March 15, 2001 | 2:00 pm | B–841A |
| Germany | March 22, 2001 | 9:00 am | 6057 |
| Italy | March 22, 2001 | 2:00 pm | 6057 |
| United Kingdom | March 23, 2001 | 9:00 am | 6057 |
| France | March 23, 2001 | 2:00 pm | 6057 |
| Japan | March 26, 2001 | 9:00 am | 6057 |

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument with an electronic version included.

| Case | Briefs due | Rebuttals due |
|---|---|---|
| General Issues | March 5, 2001 | March 12, 2001. |
| Sweden | March 5, 2001 | March 12, 2001. |
| Germany | March 6, 2001 | March 13, 2001. |
| Italy | March 6, 2001 | March 13, 2001. |
| United Kingdom | March 7, 2001 | March 14, 2001. |
| France | March 7, 2001 | March 14, 2001. |
| Japan | March 8, 2001 | March 15, 2001. |

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs. The Department will issue final results of these reviews within 120 days of publication of these preliminary results.

**Assessment Rates**

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer-specific assessment rate or value for subject merchandise.

**Export-Price Sales**

With respect to export-price sales for these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and export price) for each importer/customer by the total number of units sold to that importer/customer. We will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period.

**Constructed Export Price Sales**

For CEP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (see 19 CFR 351.212(a)).

**Cash-Deposit Requirements**

To calculate the cash-deposit rate for each respondent (*i.e.,* each exporter and/or manufacturer included in these reviews) we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period subject to each order.

In order to derive a single deposit rate for each order for each respondent, we weight-averaged the export-price and CEP deposit rates (using the export price and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both export-price and CEP sales by the combined total value for both export-price and CEP sales to obtain the deposit rate.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of the notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act unless the order has been revoked, effective January 1, 2000: (1) The cash-deposit rates for the reviewed companies will be the rates established in the final results of reviews; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for

the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant order made effective by the final results of review published on July 26, 1993 (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996)). These rates are the ''All Others'' rates from the relevant less-than-fair-value investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these determinations in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 30, 2001.

**Bernard T. Carreau,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 01–2981 Filed 2–2–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–428–815]**

### Amended Final Determination of Sales at Less Than Fair Value: Certain Corrosion Resistant Carbon Steel Flat Products From Germany

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Amendment to final determination of antidumping duty investigation.

**SUMMARY:** We are amending the cash deposit rate for Thyssen Stahl AG to 10.02% *ad valorem*.

**EFFECTIVE DATE:** February 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Thirumalai, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4087.

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to 19 CFR part 353 (April 1997).

**Amended Final Determination**

On September 27, 2000, the Department of Commerce published its *Amended Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Germany* (68 FR 58044). In that determination, the Department stated that it was not necessary to change the cash deposit rates for Thyssen Stahl AG with respect to either product because new cash deposit rates had been established in administrative reviews subsequent to the less-than-fair-value investigations. However, an administrative review for Thyssen had been completed only with respect to cold-rolled carbon steel flat products. Therefore, we must amend the cash deposit rate for Thyssen from 4.18% to 10.02% *ad valorem* with respect to corrosion resistant carbon steel flat products from Germany.

**Cash Deposit Instructions**

The cash deposit rate of 10.02% *ad valorem* for Thyssen Stahl AG with respect to corrosion resistant carbon steel flat products from Germany will be effective upon publication of this notice of amended final determination on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date.

This amended final determination and notice are in accordance with section 736(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.20(a)(4).

Dated: January 26, 2001.

**Bernard T. Carreau,**

*Fulfilling the duties of Assistant Secretary for Import Administration.*

[FR Doc. 01–2982 Filed 2–2–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–810]**

### Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of 1999–2000 administrative review and partial rescission of administrative review of stainless steel bar from India.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India with respect to Panchmahal Steel Limited. This review covers sales of stainless steel bar to the United States during the period February 1, 1999, through January 31, 2000.

We have preliminarily determined that, during the period of review, Panchmahal Steel Limited made sales below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties equal to the difference between the export price and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are also requested to submit (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** February 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** Blanche Ziv or Ryan Langan, Office 1, AD/CVD Enforcement, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4207 or (202) 482–1279 respectively.

**SUPPLEMENTARY INFORMATION:**

## Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, all references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR Part 351 (April 1999).

## Background

On February 21, 1995, the Department published in the **Federal Register** (60 FR 9661) the antidumping duty order on stainless steel bar from India. The Department notified interested parties of the opportunity to request an administrative review of this order on February 14, 2000 (65 FR 7348). In February 2000, the Department received requests from the four respondents to conduct an administrative review. Thus, in accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on March 30, 2000 (65 FR 16875), with respect to Chandan Steel Ltd. (''Chandan''), Isibars Limited (''Isibars''),Viraj Impoexpo Ltd. (''Viraj''), and Panchmahal Steel Limited (''Panchmahal''). The review covers the period February 1, 1999, through January 31, 2000.

On May 2, 2000, Chandan and Isibars withdrew their requests for review. Chandan and Isibars' withdrawal requests were timely and no other interested party requested a review of these companies. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the review of Chandan and Isibars.

On June 20 and 29, 2000, the petitioners submitted allegations of sales made below the cost of production for Viraj and Panchmahal, respectively. Because the petitioners' allegations provided a reasonable basis to suspect that sales in the home market by Viraj and Panchmahal had been made at prices below the cost of production, the Department initiated sales below cost investigations of Viraj and Panchmahal on July 11 and 13, 2000, respectively.

On September 8, 2000, Viraj withdrew its request for review. Although, the respondent's withdrawal was received by the Department well after the deadline of June 28, 2000, section 351.213(d)(1) of the Department's regulations permits the Department to extend the deadline if ''it is reasonable to do so.'' Therefore, in accordance with 351.213(d)(1) of the Department's regulations, the Department extended the deadline to withdraw requests for review and rescinded the administrative review with respect to Viraj (*see* the September 26, 2000 memo, ''Partial Rescission of Administrative Review with Respect to Viraj Impoexpo, Ltd.'' from team to Susan Kuhbach).

The Department conducted verification of Panchmahal's cost and sales information in December 2000, at Panchmahal's corporate headquarters in Baroda, India, and at its production facility in Kalol, India. The Department issued the sales and cost verification report on January 4, 2001.

## Scope of Reviews

Imports covered by these reviews are shipments of stainless steel bar (''SSB''). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.,* cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these reviews is dispositive.

## Use of Facts Otherwise Available

Section 776(a) provides that the Department shall apply ''facts otherwise available'' if, *inter alia,* a respondent:

(1) Withholds information that has been requested;

(2) Fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of Section 782;

(3) Significantly impedes a proceeding; or

(4) Provides information that cannot be verified.

Section 782(e) of the Act provides further that the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination but does not meet all the applicable requirements established by the Department if—

(1) The information is submitted by the deadline established for its submission;

(2) The information can be verified;

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination;

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and

(5) The information can be used without undue difficulties.

Thus, if any one of these criteria is not met, the Department may decline to consider the information at issue in making its determination.

We have preliminarily determined that the use of facts available is necessary in this review for Panchmahal. Our reasons are described below (*see* also the January 29, 2001 memo, ''Application of Adverse Facts Available for Panchmahal Steel Ltd.'' from team to Susan Kuhbach).

In its May 15, 2000 section A questionnaire response, Panchmahal reported the quantity and value of home market sales of the merchandise under review. Panchmahal's June 8, 2000 Section B questionnaire response, which included its home market sales database, indicated that ''black bar,'' or hot rolled bar was the only type of the merchandise under review sold in the home market during the POR. On September 6, 2000, we asked Panchmahal to confirm that it had reported all of its home market sales of the merchandise under review. In

making this confirmation, we specifically instructed Panchmahal to ensure that sales of ''bright bar,'' or cold-rolled bar, and black bar were included in the reported data for the home market. On October 10, 2000, Panchmahal confirmed in its first supplemental questionnaire response that it had reported all home market sales of all types of the merchandise under review in the home market sales listed in its previous submissions.

At verification, we discovered that Panchmahal failed to report its home market sales of bright bar (*see* the January 4, 2001 sales and cost verification report), despite the fact that, as noted above, cold-rolled bar is included in the scope of the review. Moreover, the Department specifically asked for ''bright bar'' sales in its supplemental questionnaire. Panchmahal stated at verification that it has excluded these home market sales because it believed that the merchandise in question was not included within the scope of the review due to quality differences. However, we disagree with Panchmahal's interpretation of the scope of this proceeding and believe that Panchmahal should have reported its home market sales of bright bar. The description of the merchandise covered by the scope of this review does not make exceptions based on the quality of the merchandise. Furthermore, if Panchmahal was uncertain of its reporting requirements, it should have sought clarification from the Department about it. It did not do so despite having had ample opportunity.

In addition, Panchmahal did not prepare for verification as requested in the verification outline. Specifically, Panchmahal did not prepare any of the requested documentation for the pre-selected items for sales or costs. As a result, the verification process was significantly impeded and many reported items were left unverified. Specifically, packing costs, indirect selling expenses, commission expenses and level of trade adjustments were not verified with respect to home market sales. In addition, we were unable to verify the following expenses and adjustments for U.S. sales: Inland freight; international freight; credit; packing; indirect selling expenses; brokerage and handling; and inventory carrying costs. Regarding its costs, Panchmahal did not prepare documents demonstrating how the reported cost information reconciled to inventory, consumption, production, and accounting records and financial statements. Therefore, we were unable to verify the reported raw material, overhead, and bright bar cost data; labor costs were the only reported costs that were verified.

Despite having stated at the beginning of verification that all the documents required for verification were available at its sales office, Panchmahal was unable during verification to provide documents supporting production and costs data because they were stored at the production factory. Consequently, the documents available to the verifiers for the majority of cost and production data were limited to worksheets and summary sheets Panchmahal used to prepare the responses submitted to the Department, and monthly accounting ledgers.

In addition, Panchmahal officials were unavailable to participate in verification on numerous occasions and for extended periods of time. *See, e.g.*, verification report at 8–10 and 14. The Department scheduled verification to last 5 full business days, but because Panchmahal officials were not available throughout this period, a significant amount of time was wasted and unproductive. Panchmahal officials' absence significantly impeded the Department's ability to conduct a complete sales and cost of production verification. (For a further discussion *see*, Memorandum to Richard Moreland dated Janaury 29, 2001, ''Application of Facts Otherwise Available for Panchmahal Steel Ltd.,'' which is available in the public records of the Department's Central Records Unit, Room B–099).

For these resaons, we find that Panchmahal's sales and cost information is substantially unverified and cannot serve as a reliable basis for calculating export price or normal value. Therefore, in accordance with section 776(a)(2) of the Act, we find that the use of facts otherwise available is warranted because Panchmahal withheld information requested by the Department, Panchmahal significantly impeded this proceeding, and Panchmahal's reported sales and cost information was unverifiable.

In determining the appropriate facts available to assign to Panchmahal, in accordance with section 776(b) of the Act, we find that Panchmahal failed to cooperate by not acting to the best of its ability to comply with requests for information throughout this administrative review (*see* Memorandum to Richard Moreland dated Janaury 29, 2001, ''Application of Facts Otherwise Available for Panchmahal Steel Ltd.''). Therefore, we preliminarily determine that an adverse inference is warranted in selecting facts otherwise available. We also find that Panchmahal's sales and costs information does not meet the standards for consideration of information outlined in section 782(e) of the Act.

As adverse facts available, we have assigned a margin of 19.54 percent to Panchmahal. This margin was calculated for Ferroy Alloys Corporation Limited (''Facor'') during the 1998–1999 administrative review and represents the highest weighted-average margin determined for any firm during any segment of this proceeding (*see Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review,* 65 FR 48965, 48968 (Aug. 10, 2000)).

Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (''SAA'') provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 103–316 at 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

The highest calculated margin in the history of this proceeding is 19.54 percent (*see Stainless Steel Bar from*

*India; Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review,* 65 FR 48965, 48968 (Aug. 10, 2000)). In this review, there are no circumstances indicating that this margin is inappropriate as facts available. There are no calculated margins in this review. Therefore, we find that the 19.54 percent rate is corroborated to the greatest extent practicable in accordance with section 776(c) of the Act.

**Preliminary Results of the Reviews**

We preliminarily determine the following weighted-average dumping margin:

| Manufacturer/ exporter | Period | Margin (percent) |
|---|---|---|
| Panchmahal ..... | 2/1/98–1/31/99 | 19.54 |

Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be held 37 days after the publication of this notice, or the first business day thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the ''all others'' rate established in the LTFV investigation (59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 29, 2001.

**Bernard T. Carreau,**

*Fulfilling the duties of Assistant Secretary for Import Administration.*

[FR Doc. 01–2980 Filed 2–2–01; 8:45 am]

**BILLING CODE 3510–DS–P**

---

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Announcement of a Government-Industry IT Security Forum To Discuss Strategies for the Development of Security Requirements and Specifications for Computing and Real-Time Control Systems

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Institute of Standards and Technology (NIST) and the National Security Agency (NSA), partners in the National Information Assurance Partnership (NIAP), invite interested parties to attend a government-industry IT security forum to discuss potential public and private sector strategies for the development of security requirements and specifications needed for the protection of government, business and personal computing and real-time control systems.

The primary purpose of the IT security forum is to bring national attention to the concept of security requirements definition and its importance in developing a more secure information infrastructure within the United States. Leaders from government, industry, and academia will have an opportunity to share their views on the role of security requirements in the development, testing and acquisition of commercial products and systems. There will also be discussion on prospective approaches to security requirements development, the importance of national and international standards, cost-effective and timely testing strategies, and the use of state-of-the-art tools and techniques in this area.

The Government-Industry IT Security Forum will follow the First Symposium on Requirements Engineering for Information Security (SREIS) hosted by the Purdue University Center for Education and Research in Information Assurance and Security (CERIAS) in cooperation with the North Carolina State University (NCSU) E-commerce program and the Association for Computing Machinery (ACM).

**DATES:** The IT Security Forum will take place on March 7, 2001 from 9:00 a.m. until 5:00 p.m.

**ADDRESSES:** University Place Conference Center and Hotel, IUPUI (Indiana University-Purdue University at Indianapolis), 850 West Michigan Street, Indianapolis, IN 46202–5198.

**FOR FURTHER INFORMATION CONTACT:** Forum Coordinator, Dr. Ron Ross, Information Technology Laboratory, NIST, 100 Bureau Drive, Mailstop 8930, Gaithersburg, MD 20899–8930; Telephone: (301) 975–5390; E-mail: *rross@nist.gov*; World wide web: *http://niap.nist.gov.* Comments and suggestions on the proposed forum agenda are welcomed and appreciated.

*Forum Registration:* To register for the Government-Industry IT Security Forum, visit the NIAP web site at *http://niap.nist.gov* or the Purdue CERIAS web site at *http://www.cerias.purdue.edu/sreis.html.*

Registrations must be received by February 24, 2001. For additional registration or logistics information, please contact Mr. John Wellman, Business Office, Conference Division, Purdue University; Telephone: (800) 359–2968 or (765) 494–0243; Fax: (765) 494–0567; E-mail: *jmw@purdue.edu.*

**SUPPLEMENTARY INFORMATION:** For over a decade, NIST and NSA have worked cooperatively with government agencies, industry, and academia on the development of testing and evaluation

programs to assess the security features in commercial information technology (IT) products. There have also been extensive efforts, both nationally and internationally, to develop IT security evaluation criteria to support these assessment programs. During that period, few products were tested and there were continuing questions about the cost and timeliness of the evaluations. Additionally, due to operational considerations, many consumers did not use the products in their evaluated configurations.

With all of the focus on criteria and testing programs, there has been very little attention paid to helping consumers define and create their IT security requirements. There has also been insufficient effort to bring consumers and producers of products and systems together to build a better understanding of what customers need in the realm of security and what industry is able to deliver in a cost-effective manner.

Consumers of IT products from a variety of public and private sector communities of interest, *e.g.,* healthcare, banking and finance, defense, national security, insurance, legal, manufacturing, process control, telecommunications, etc., continue to express interest in obtaining better ways to convey their security requirements to industry in an effort to build more secure systems for their respective enterprises. New and innovative approaches to developing security requirements for commercial products and systems are being explored in many venues. One such effort, led by NIST, NSA, and other standards and security organizations worldwide, has been the development of the Common Criteria for Information Technology Security Evaluation.

The Common Criteria provides a mechanism for consumers to articulate their IT security requirements and a common structure by which consumers and producers can exchange perspectives on what security features are needed and what security features can be provided. The Common Criteria became an international standard (ISO/IEC 15408) in 1999 and now serves as the foundation for a formal fourteen-nation arrangement recognizing the results of security evaluations conducted in participating nations.

Consumers and producers of IT products and systems can now use the Common Criteria to produce well-defined sets of security requirements in many areas such as operating systems, database management systems, smart cards, telecommunications and networks devices, and applications. There is also an opportunity to address the ''realistic configuration'' and ''timeliness of evaluation'' problems by allowing producers and consumers of products to agree on a set of security requirements (for both features and assurances) that meet the consumer's real needs.

Without consumer involvement in helping to shape the demand for evaluated products through the security requirements definition process, the ultimate goal of improving the confidence consumers have in the products they purchase, may be more difficult to achieve. Greater confidence in the security features of the individual component products will facilitate the development of more secure systems for Federal agencies and private sector enterprises, and ultimately, result in a more secure information infrastructure for the United States.

The sponsors of the forum hope to obtain answers to the following questions:

- What are the important information technology areas for general purpose products, *e.g.* operating systems, database systems, firewalls, intrusion detection systems, etc., that could benefit from the development of stable sets of security requirements?
- How are the security requirements for general-purpose products best developed?
- What specific security requirements are needed to address highly reliable, real time systems?
- Are there additional needs for IT security requirements tailored to specific consumer communities (*e.g.,* healthcare, banking, manufacturing, process control)?
- If so, how should these security requirements be developed (process and organization question) and how do they interact with the security requirements for general-purpose products (technical question)?
- What value do consumers, government security experts, and the insurance and audit industries see in third party testing and evaluation of commercial products?
- How much value do consumers place on the assurances received from IT product testing and evaluation and how much product currency are they willing to give up to get it?
- How can the results from component product testing and evaluation be used to increase the level of confidence consumers have in their systems and networks?
- What role should the U.S. Government play in the development of security requirements for key information technology areas that affect the U.S. information infrastructure?
- Should the U.S. Government mandate for Federal agencies, the use of evaluated and validated information technology products built to specific security requirements, *e.g.,* Common Criteria Protection Profiles?

**Preliminary Agenda**

—Introduction and Forum Overview (NIAP Director)
—Keynote Address (U.S. IT Industry CEO)
—Panel 1: Consumer's Perspective (Invited Participants)
—Panel 2: Insurance, Audit, and Testing Industry Perspectives (Invited Participants)
—Panel 3: IT Industry's Perspective (Invited Participants)
—Panel 4: Research and Development Activities: A Perspective from Academia (Invited Participants)
—Approaches for Developing Requirements: Bringing the Communities Together (Invited Participants)
—Summary and Conclusions (NIAP Director)

Dated: January 29, 2001.

**Karen Brown,**

*Acting Director, NIST.*

[FR Doc. 01–2977 Filed 2–2–01; 8:45 am]

BILLING CODE 3510–CN–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Call for Applications for Alternate Representatives to the Coral Reef Ecosystem Reserve Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The Executive Order requires the Secretary of Commerce or his or her designee (hereafter ''Secretary'') to establish a Coral Reef Ecosystem Reserve Council (Reserve Council) to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands

National Marine Sanctuary by the Secretary. The Secretary, through the National Marine Sanctuary Program (NMSP), established the Reserve Council and is now seeking applicants for alternates as representatives on the Reserve Council. Previous applicants do not need to reapply and will still be considered in the competitive pool.

**DATES:** Completed applications must be postmarked no later than March 2, 2001.

**ADDRESSES:** Application kits may be obtained from Elizabeth Moore, National Marine Sanctuary System, 1305 East West Highway, N/ORM6, Room 11642, Silver Spring, Maryland, 20910, or online at: http://hawaiireef.noaa.gov.

Completed applications should be sent to the same address as above.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Moore at (301) 713–3125 x170, or elizabeth.moore@noaa.gov, or visit the web site at: *http://hawaiireef.noaa.gov.*

**SUPPLEMENTARY INFORMATION:** On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Act, as amended by the National Marine Sanctuaries Amendments Act of 2000. The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve will be managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Order. The Secretary has also initiated the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the Executive Order, which is part of the application kit and can be found on the web site listed above.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary. The National Marine Sanctuary Program (NMSP) has established the Reserve Council and is now accepting applications from interested individuals for alternates for the following positions on the Council:

1. Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

2. Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

A. Marine mammal science.

B. Coral reef ecology.

C. Native marine flora and fauna of the Hawaiian Islands.

D. Oceanography.

E. Any other scientific discipline the Secretary determines to be appropriate.

3. Three representatives from non-governmental wildlife/marine life, environmental, and/or conservation organizations.

- One representative from the commercial fishing industry that conducts activities in the Northwestern Hawaiian Islands.
- One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.
- One representative from the ocean-related tourism industry.
- One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.
- One citizen-at-large representative.

All individuals who have previously applied do not need to reapply and remain in the competitive pool for the alternates.

The Reserve Council also includes one representative from the State of Hawaii as appointed by the Governor; the manager of the Hawaiian Islands Humpback Whale National Marine Sanctuary as a non-voting member; and one representative each, as non-voting members, from the Department of the Interior, Department of State, National Marine Fisheries Service, Marine Mammal Commission, U.S. Coast Guard, Department of Defense, National Science Foundation, and the Western Pacific Regional Fishery Management Council. The non-voting representatives are chosen by the agencies and other entities, respectively. The charter for the Council can be found in the application kit, or on the web site listed above.

Applicants for the alternate positions are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; and philosophy regarding the conservation and management of marine resources. Applicants who are chosen as alternates represent a seat in the absence of the Council member and/or may also complete the term if a member resigns. Alternates hold the same privileges as members when they are representing the member at a Council meeting. When the member is present at meetings, the alternate may participate as a member of the public. Alternates should expect to serve two- to three-year terms, pursuant to the Council's charter. Persons who are interested in applying for membership on the Council may obtain an application from either the person or website identified above. Completed applications must be sent to the address listed above and must be received by March 2, 2001.

**Authority:** 16 U.S.C. Section 1431 et seq.; Pub. L. 106–513.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 29, 2001.

**Margaret A. Davidson,**

*Acting Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 01–2951 Filed 2–2–01; 8:45 am]

**BILLING CODE 3510–08–M**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

January 30, 2001.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** February 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles

and Apparel website at http://www.otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on September 19, 2000 and January 15, 2001, between the Governments of the United States and Ukraine establishes limits for certain wool textile products, produced or manufactured in Ukraine and exported during the period beginning on January 1, 2001 and extending through December 31, 2001.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000).

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

January 30, 2001.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on September 19, 2000 and January 15, 2001, between the Governments of the United States and Ukraine, you are directed to prohibit, effective on February 5, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

| Category | Twelve-month limit |
|---|---|
| 435 | 95,615 dozen. |
| 442 | 15,918 dozen. |
| 444 | 68,979 numbers. |
| 448 | 68,979 dozen. |

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Ukraine.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated September 13, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

FR Doc. 01–2946 Filed 2–2–01; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amendment of Export Visa Requirements for Shipments of Textile and Clothing Integrated into GATT 1994 in the Second Stage from Oman

January 30, 2001.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending export visa requirements.

**EFFECTIVE DATE:** February 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Uruguay Round Agreement of Textiles and Clothing provides for the integration of textiles and clothing into GATT 1994. The second stage of the integration began on January 1, 1998 (see 60 FR 21075, published May 1, 1995). In a **Federal Register** notice published on October 7, 1998 (63 FR 53881), the Committee for the Implementation of Textile Agreements (CITA) amended the export visa requirements to no longer require a visa for products integrated during the second stage of integration for products from members of the World Trade Organization (WTO).

Oman joined the WTO on November 9, 2000. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to no longer require a visa for products integrated into GATT 1994 in the second stage from Oman entered on and after February 5, 2001.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000).

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

January 30, 2001.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); executive Order 11651 of March 3, 1972, as amended; and the World Trade Organization (WTO) Agreement on Textiles and Clothing, you are directed to amend the current visa requirements for textile and apparel products produced or manufactured in Oman that are entered into the United States on and after February 5, 2001, and that were integrated into GATT 1994 in the second stage of integration.

Effective on February 5, 2001, export visas no longer will be required for certain textile and apparel products from Oman.

Textile products subject to this directive are 229, 330, 349, 353, 354, 432, 439, 465, 630, 632, 653, 654, 665, 832, 839 and 899; and products in 239-babies garments, except diapers; 359, 459, 659 and 859-footwear; 369, 469 and 669-certain wadding and footwear; and 859-other silk blends and non-cotton vegetable fiber apparel. A complete list of products subject to this directive is attached to this letter.

Export visas will continue to be required for non-integrated products produced or manufactured in Oman.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**ATTACHMENT**

**I. PART OR PARTIAL CATEGORIES INTEGRATED JANUARY 1, 1998**

BABIES GARMENTS AND CLOTHING ACCESSORIES, EXCEPT DIAPERS

| Category | 1998 HTS |
|---|---|
| 239 | 6111201000 |
| 239 | 6111202000 |
| 239 | 6111203000 |
| 239 | 6111204000 |
| 239 | 6111205000 |
| 239 | 6111206010 |
| 239 | 6111206020 |
| 239 | 6111206030 |
| 239 | 6111206040 |
| 239 | 6111301000 |
| 239 | 6111302000 |
| 239 | 6111303000 |
| 239 | 6111304000 |
| 239 | 6111305010 |
| 239 | 6111305015 |
| 239 | 6111305020 |
| 239 | 6111305030 |
| 239 | 6111305040 |
| 239 | 6111901000 |
| 239 | 6111902000 |
| 239 | 6111903000 |
| 239 | 6111904000 |
| 239 | 6111905010 |
| 239 | 6111905020 |
| 239 | 6111905030 |
| 239 | 6111905040 |
| 239 | 6209201000 |
| 239 | 6209202000 |
| 239 | 6209203000 |
| 239 | 6209205030 |
| 239 | 6209205035 |
| 239 | 6209205045 |
| 239 | 6209205050 |
| 239 | 6209301000 |
| 239 | 6209302000 |
| 239 | 6209303010 |
| 239 | 6209303020 |
| 239 | 6209303030 |
| 239 | 6209303040 |
| 239 | 6209901000 |
| 239 | 6209902000 |
| 239 | 6209903010 |
| 239 | 6209903015 |
| 239 | 6209903020 |
| 239 | 6209903030 |
| 239 | 6209903040 |
| 239 | 6505901515 |
| 239 | 6505902030 |
| 239 | 6505905030 |
| 239 | 6505906030 |
| 239 | 6505907030 |
| 239 | 6505908045 |

FOOTWEAR

| Category | 1998 HTS |
|---|---|
| 359 | 6406991550 |
| 459 | 6405206030 |
| 459 | 6405206060 |
| 459 | 6405206090 |
| 459 | 6406991505 |

FOOTWEAR—Continued

| Category | 1998 HTS |
|---|---|
| 459 | 6406991560 |
| 659 | 6406991510 |
| 659 | 6406991540 |
| 859 | 6406991570 |

CERTAIN WADDING AND FOOTWEAR

| Category | 1998 HTS |
|---|---|
| 369 | 5601101000 |
| 369 | 5601210090 |
| 369 | 5701901020 |
| 369 | 5701902020 |
| 369 | 5702109020 |
| 369 | 5702392010 |
| 369 | 5702491020 |
| 369 | 5702491080 |
| 369 | 5702591000 |
| 369 | 5702991010 |
| 369 | 5702991090 |
| 369 | 5705002020 |
| 369 | 6406107700 |
| 469 | 5601290020 |
| 469 | 5603941010 |
| 469 | 6406109020 |
| 669 | 5601102000 |
| 669 | 5601220090 |
| 669 | 5607493000 |
| 669 | 5607504000 |
| 669 | 6406109040 |

OTHER SILK BLEND AND NON-COTTON VEGETABLE FIBER APPAREL

| Category | 1998 HTS |
|---|---|
| 859 | 6103292082 |
| 859 | 6103498060 |
| 859 | 6104292087 |
| 859 | 6104292090 |
| 859 | 6104698020 |
| 859 | 6110909064 |
| 859 | 6110909066 |
| 859 | 6112202030 |
| 859 | 6112390090 |
| 859 | 6112490090 |
| 859 | 6114909020 |
| 859 | 6114909030 |
| 859 | 6114909040 |
| 859 | 6114909070 |
| 859 | 6117809570 |
| 859 | 6117909095 |
| 859 | 6203293080 |
| 859 | 6203498010 |
| 859 | 6204294090 |
| 859 | 6204294092 |
| 859 | 6204696070 |
| 859 | 6204699050 |
| 859 | 6211118040 |
| 859 | 6211128030 |
| 859 | 6211204860 |
| 859 | 6211207830 |
| 859 | 6211399010 |
| 859 | 6211399020 |
| 859 | 6211399060 |
| 859 | 6211399090 |
| 859 | 6211499010 |
| 859 | 6211499020 |
| 859 | 6211499060 |
| 859 | 6211499070 |
| 859 | 6211499090 |

OTHER SILK BLEND AND NON-COTTON VEGETABLE FIBER APPAREL—Continued

| Category | 1998 HTS |
|---|---|
| 859 | 6213102000 |
| 859 | 6213902000 |
| 859 | 6217109550 |
| 859 | 6217909095 |
| 859 | 6505901560 |
| 859 | 6505902590 |
| 859 | 6505909095 |
| 859 | 6505909085 |

II. WHOLE CATEGORIES INTEGRATED JANUARY 1, 1998

| Category | 1998 HTS |
|---|---|
| 229 | Special Purpose Fabric |
| 330 | Handkerchiefs |
| 349 | Brassieres and Other Body Supporting Garments |
| 353 | Men's and Boys' Down-filled Coats |
| 354 | Women's and Girls' Down-filled Coats |
| 432 | Hosiery |
| 439 | Babies Garments and Clothing Accessories |
| 465 | Floor Coverings |
| 630 | Handkerchiefs |
| 632 | Hosiery |
| 653 | Men's and Boys' Down-filled Coats |
| 654 | Women's and Girls' Down-filled Coats |
| 665 | Floor Coverings |
| 832 | Hosiery |
| 839 | Babies Garments and Clothing Accessories |
| 899 | Other Silk and Vegetable Blend Manufactures |

[FR Doc. 01–2899 Filed 2–2–01; 8:45 am]

**BILLING CODE 3510–DR–F**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0006]**

## Proposed Collection; Comment Request Entitled Subcontracting Plans/Subcontracting Report for Individual Contracts (Standard Form 294)

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Correction.

**SUMMARY:** This notice corrects the information collection requirement regarding an extension to an existing OMB Clearance Number 9000–0006 previously published in the **Federal Register** at 66 FR 7468, January 23, 2001.

**CORRECTION:** In the document appearing in the January 23, 2001, issue, add the following before the **ADDRESSES** paragraph:

''**DATES:** Comments may be submitted on or before April 6, 2001.''

**FOR FURTHER INFORMATION CONTACT:** Rhonda Cundiff, Office of Acquisition Policy, GSA (202) 501–0044.

Dated: January 30, 2001.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

[FR Doc. 01–2901 Filed 2–2–01; 8:45 am]

**BILLING CODE 6820–34–U**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* 06–07 February 2001.

*Time of Meeting:* 0830–1630, 06 February 2001, 0830–1630, 07 February 2001.

*Place:* Aerojet Sacramento Facility, Highway 50 & Aerojet Road, Rancho Cordova, CA 95760.

*Agenda:* The Army Science Board's (ASB) study on Venture Capital will have their kickoff meeting to be briefed by Study Sponsors and to break into individual panels. There will be a briefing by RAND, discussion on the CIA Initiative, and Army Procurement, to name a few. For further information, please contact LTC John Anzalone, Operations Research Analyst, (703) 604–7436.

**Wayne Joyner,**

*Program Support Specialist, Army Science Board.*

[FR Doc. 01–2903 Filed 2–2–01; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Notice of Intent To Prepare a Draft Programmatic Environmental Impact Statement for the Long Term Management of the National Defense Stockpile Inventory of Excess Mercury

**AGENCY:** Defense National Stockpile Center (DNSC).

**ACTION:** Notice of intent to prepare a draft programmatic environmental impact statement.

**SUMMARY:** This notice is provided in accordance with the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) and the DLAR 1000.22, Environmental Considerations in DLA Actions in the United States, implementing the National Environmental Policy Act (NEPA). DNSC, part of DLA within DoD, will prepare an environmental impact statement (EIS) that will evaluate alternatives for managing the DNSC inventory of excess mercury. DNSC is a mandatory source of supply for raw materials for all Federal Agencies as required by the Federal Acquisition Regulation, Part 8.002 Use of Other Government supply sources. The mercury in the Stockpile has been declared excess to national defense needs and DNSC must decide on long term management of the excess mercury. For the purposes of this EIS, the term ''long term management'' shall include any potential action to sell or dispose of such material. DNSC is responsible for the safe, secure, and environmentally sound stewardship for all commodities, such as lead, zinc, aluminum oxide, tin and bauxite, in the DNSC inventory, including the inventory of excess mercury. The mercury inventory is currently stored in enclosed warehouses at four different locations: New Haven, IN; Oak Ridge, TN; Somerville, NJ; and Warren, OH. DNSC will use the EIS process to inform the public of how the inventory of excess mercury is currently managed and how it became part of the DNSC. DNSC will also ensure that the public has an opportunity to comment on what could be done regarding its long term management. Public comments are invited and encouraged concerning both the scope of environmental and socioeconomic issues and the long term management alternatives that should be addressed in the EIS. DOE is a cooperating agency for the preparation of this EIS because some of DoD's excess mercury is currently stored at the Department of Energy's (DOE) Y–12 National Security Complex in Oak Ridge, Tennessee.

**DATES:** Comments on the scope of the issues and alternatives to be addressed in the EIS must be postmarked or e-mailed no later than 30 June 2001.

**ADDRESSES:** Written comments should be sent to: Project Manager, Mercury Management EIS; DNSC–E; Defense Logistics Agency; Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 4616, Fort Belvoir, Va. 22060–6223. Comments may also be posted to the Mercury Management EIS website at ''www.mercuryeis.com'' or faxed to (888) 306–8818.

**FOR FURTHER INFORMATION CONTACT:** Call and leave a voice mail (1–888–306–6682) or fax message (1–888–306–8818) at the Mercury Management EIS toll free number; e-mail your request to ''John_Reinders@hq.dla.mil''; or access the Mercury Management EIS website at ''www.mercuryeis.com''. For information concerning DOE's NEPA process, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC, 20585. Telephone: 202–586–4610, or leave a message at 1–800–472–2756, or access tis.eh.doe.gov/NEPA.

**SUPPLEMENTARY INFORMATION:**

*Background:* the Defense National Stockpile program was established by Congress in the Strategic and Critical Materials Stock Piling Act of 1939, as amended, to minimize the United States' dependence on foreign sources of essential materials in times of national emergency. Between 1949 and 1988, the General Services Administration (GSA) and the Federal Emergency Management Agency (FEMA) were responsible for the program. In 1988, the responsibility for the program was delegated to the Secretary of Defense, who assigned the program to DLA. DNSC was established within DLA to manage the program, and is headquartered at Fort Belvoir, VA and operates storage depots nationwide. The stockpile currently includes approximately 68 commodities, including lead, tin, zinc, aluminum oxide, cobalt, bauxite, and mercury.

DNSC is responsible for all activities necessary to provide safe, secure, and environmentally sound stewardship of all commodities in the inventory. Over the past several years as new technologies have evolved and the global economics emerged, Congress had declared most of the DNSC materials to be in excess of national defense needs and has authorized their disposition, generally by sale. Mercury is one of these commodities determined

to be in excess to national defense needs.

Mercury is a dense, naturally occurring, silver-colored metallic element that is liquid at room temperature. Sometimes called ''quicksilver'', liquid mercury has been used extensively in manufacturing processes because it conducts electricity, reacts to temperature changes, and alloys with other metals. Mercury is used in electrical switches, hospital equipment and supplies, fluorescent lights, conventional lights in automobile interiors, dental fillings, etc.

Mercury is released into the air, water, and soil by a wide variety of natural processes (degassing from rocks and water) and human activities. Mercury that enters the atmosphere can be transported globally. It is removed from the atmosphere through wet and dry deposition upon land and surface water. Mercury in the aquatic environment can be transformed into methylmercury where it can then bioaccumulate to toxic levels in terrestrial and aquatic food chains. Manmade sources include coal combustion, medical and municipal waste incinerators; mining and smelting of mercury ores; mercury cell chloralkali plants; copper and lead smelters; and cement manufacturers. Mercury is designated as a hazardous substance under Section 307(a) of the Clean Water Act, Section 112 of the Clean Air Act, and Section 3001 of the Resource Conservation and Recovery Act.

The DNSC excess inventory of mercury is between 99.5 and 99.9 percent pure mercury. The material is currently stored in steel flasks with each flask containing about 76 pounds (34.5 kilograms) of mercury. The flasks are stored in wooden pallet boxes. Most of the flasks date from the 1940's and 1950's.

The inventory of approximately 4,890 tons (4,440 metric tons) of excess mercury is currently stored in enclosed warehouses at four DNSC sites: Somerville, NJ; New Haven, IN; Oak Ridge, TN; and Warren, OH. Most of the excess inventory, about 2,882 tons (75,980 flasks) is stored at the Somerville Depot in Somerville, NJ. Approximately 770 tons (20,276 flasks) is stored at the U.S. Department of Energy (DOE) Y–12 National Security Complex in Oak Ridge, TN; and 621 tons (16,355 flasks) is stored at the Warren Depot in Warren, OH. The remainder, approximately 614 tons (16,151 flasks), is stored at the Casad Depot, located approximately 3 miles (4.8 kilometers) east of New Haven, IN. Public access to the mercury is restricted by fencing, locked warehouse, security guards, and other measures. DNSC regularly inspects the mercury stockpile to ensure that it is safe and secure.

DNSC, as custodian of the excess inventory of mercury, must decide on a strategy for management of the material. As required by CEQ and DLA NEPA regulations, this decision must include consideration of a range of reasonable management alternatives and the environmental impacts of those alternatives. DNSC has historically sold excess mercury to United States and foreign companies. DNSC voluntarily suspended mercury sales in 1994 in response to concerns raised by the U.S. Environmental Protection Agency (EPA) regarding the accumulation of mercury in the global environment. In 1997, DNSC initiated a draft Environmental Assessment (EA) to support its consideration of options for future management of the stockpiled mercury. DNSC later determined that an EIS was appropriate under NEPA and cancelled the preparation of the EA.

*Purpose and Need:* DNSC needs to select and implement an environmentally safe and cost effective alternative for the long-term management of excess DNSC mercury.

*Proposed Alternatives:* As required by CEQ regulations (40 CFR 1502.2[e]), DNSC will evaluate a range of reasonable alternatives in the EIS. These alternatives will include No Action, and are likely to include consolidated long-term storage, processing, disposal, and sales alternatives. DNSC will evaluate the potential environmental and human health impacts of specific alternatives, together with engineering and socioeconomic considerations. A preferred alternative has not been identified at this time.

Under the No Action alternative, the excess inventory of mercury would continue to be stored at the current mercury storage depots, with necessary surveillance and corrective action, as necessary, to maintain safe operations. A consolidated storage alternative could include use of existing flasks, new flasks, or one metric ton containers. Processing alternatives could employ techniques for stabilizing and preventing the potential for toxic exposure to mercury. These would likely include amalgamation and/or solidification technologies that employ alloying with other metals or processing to a stable solid compound (*e.g.,* mercury sulfide). Only those technologies that are available at the time the final EIS decision is made, that are proven environmentally safe, provide for the long-term protection of the public and are cost effective will be evaluated. Stabilized mercury would need to be stored or disposed of in accordance with pertinent local, state and federal regulations, including future regulations that may result from a rule-making that the USEPA is planning in order to address stabilization of elemental mercury. Storage could be in warehouse or bunker-type facilities; disposal could be in near-surface or deeper underground engineered facilities. Sales alternatives are likely to include resumption of unrestricted sales; domestic and/or international restricted sales (*i.e.,* either by end use, purchaser, and/or quantity); or sales with certain restrictions for protection of the environment. DNSC invites comments or suggestions on these alternatives or suggestions of others that should be considered.

*Preliminary Identification of Environmental Issues:* The following issues have been tentatively identified for analysis in the EIS. The list is preliminary and is intended to facilitate public comment on the scope of this EIS. It is not intended to be all-inclusive nor does it imply any predetermination of potential impacts. DNSC invites suggestions for the addition or deletion of items on this list:

- Potential effects on the public health from exposures to hazardous materials during construction, normal operations, transportation, and credible accident scenarios.
- Impacts on surface and groundwater, floodplains and wetlands, and on water use and quality.
- Impacts on air quality and noise.
- Impacts on plants and animals and their habitat, including species that are Federal- or state-listed as threatened or endangered, or of special concern.
- Impacts on geology, and soil characteristics.
- Impacts on cultural resources such as historic, archaeological, Native American or culturally important sites.
- Socioeconomic impacts on affected communities directly related to the long term management of the excess mercury in the Stockpile.
- Environmental justice, particularly whether or not mercury management activities have a disproportionately high and adverse effect on minority and low-income populations.
- Potential impacts on land-use plans, policies and controls, and visual resources.
- Pollution prevention and waste management practices and activities.
- Economic impacts from mercury sales and resulting effects on mercury mining activities and impacts.

• Unavoidable adverse impacts, and irreversible and irretrievable commitments of resources.

• Potential cumulative environmental effects of past, present, and future operations.

• Status of compliance with all applicable federal, state, and local statutes and regulations and with international agreements, and required federal and state environmental permits, consultations and notifications.

• Compliance with all applicable Executive Orders.

• Natural disasters: floods, hurricanes, tornadoes, and seismic events.

Focus of the Mercury Management EIS will be on minimizing releases of mercury. DNSC anticipates that the key areas of interest will be human health risks, economic impacts, and accumulation of mercury in the global environment. Potential human health risks from storage, processing, and disposal, and from transportation and facility accidents will be evaluated. Consideration will also be given to issues related to accumulation of mercury in the global environment, and will be evaluated at the appropriate level of detail.

*Public Participation in the EIS Process:* CEQ regulations (40 CFR 1501.7) require an early and open process for determining the scope of an EIS and for identifying the significant issues related to the proposed action. To ensure that the full range of issues related to this proposal are addressed, DNSC invites Federal agencies, state, local and tribal governments, the general public, and the international community to comment on the scope of the Mercury Management EIS, including identification of reasonable alternatives. Additional opportunities for public input will be provided at scoping meetings (see below) and when the draft EIS is issued.

*Scoping:* The public scoping period begins with the publication of this Notice of Intent in the **Federal Register** and will continue until 30 June 2001. DNSC will consider all comments received or postmarked by the end of the comment period in defining the scope of this EIS. Comments received after that date will be considered to the extent practicable.

DNSC plans to conduct public scoping meetings in which Federal, state, local and tribal government agencies, nongovernmental organizations, the general public, and the international community are invited to participate in the open exchange of information and to submit comments on the proposed scope of the EIS. These meetings will be held in communities near the facilities where the mercury is currently stored and at regional locations. The dates, times, and exact locations of the scoping meetings will be announced in a separate **Federal Register** notice at least 15 days before a meeting, posted on the Mercury Management EIS web site, and published in local and regional newspapers.

Issues raised at the scoping meetings will be documented in the Scope of Statement for the Mercury Management EIS. The objectives of this report are to summarize the essence of the comments received in a clear and concise manner and accurately portray the planned scope of the EIS. The Scope of Statement will be distributed to reading rooms near the meeting locations, posted on the EIS web site, and mailed upon request.

*Timing:* DNSC plans to issue the draft EIS in approximately one year. DNSC and the U.S. Environmental Protection Agency will separately announce availability of the draft EIS in the **Federal Register**. DNSC will publicize the draft EIS in other media, and will provide federal, state, local and tribal government agencies, nongovernmental organizations, the general public, and the international community with an opportunity to participate in additional information forums and to submit comments.

*Requests for Copies of Draft EIS:* To receive a copy of the Draft Mercury Management EIS, please submit your request to the addresses provided in this Notice. Members of the public who request a copy of the draft EIS should specify whether they would like a copy of the entire draft EIS (which will consist of multiple bound volumes), the Summary (which will be a single volume), or the draft EIS and Summary on computer CD.

*Cooperating Agencies:* DOE is a cooperating agency for the preparation of this EIS because some of the excess mercury to be considered in the Mercury Management EIS is currently stored at DOE's Y–12 National Security Complex in Oak Ridge, Tennessee.

Issued in Fort Belvoir, VA, this 30th day of January, 2001.

**Richard J. Connelly,**

*Administrator.*

[FR Doc. 01–2911 Filed 2–2–01; 8:45 am]

BILLING CODE 3620–01–M

## DEPARTMENT OF ENERGY

### Office of Arms Control and Nonproliferation

### Proposed Subsequent Arrangement

**AGENCY:** Department of Energy.

**ACTION:** Subsequent arrangement.

**SUMMARY:** This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Between the Government of the United States of America and the Swiss Federal Council Concerning Peaceful Uses of Nuclear Energy.

This subsequent arrangement concerns the retransfer of 54 fresh MTR fuel elements containing 16,195 g uranium, 15,018 g of which is U-235, from the Paul Scherrer Institut in Switzerland to the Euratom Supply Agency. The fuel elements will be sent to CERCA, France for refabrication and then utilization in the HFR at the Center Commun ole Reclierche, Netherlands. The expected date of shipment is September 2001. The material originally was exported to Switzerland pursuant to Nuclear Regulatory Commission Export License number XSNM01840.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: January 29, 2001.

For the Department of Energy.

**Trisha Dedik,**

*Director, International Policy and Analysis for Arms Control and Nonproliferation, Office of Defense Nuclear Nonproliferation.*

[FR Doc. 01–2950 Filed 2–2–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–222–002]**

### Alliant Energy Corporate Services, Inc.; Notice of Filing

January 30, 2001.

Take notice that on January 12, 2001, Alliant Energy Corporate Services, Inc. (ALTM), tendered for filing in accordance with Order No. 614, an executed Short-Term Service Agreement with Dynegy Power Marketing, Inc., designated as IEC Operating Companies FERC Electric Tariff Original Volume No. 2, Service Agreement No. 10.

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 and protests should be filed on or before February 9, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2930 Filed 2–2–01; 8:45am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–667–000 and ER01–667–001]**

### Axia Energy, L.P.; Notice of Issuance of Order

January 30, 2001.

Axia Energy, L.P. (Axia) submitted for filing a rate schedule under which Axia will engage in wholesale electric power and energy transactions at market-based rates. Axia also requested waiver of various Commission regulations. In particular, Axia requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Axia.

On January 25, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard to protest the blanket approval of issuances of securities or assumptions of liability by Axia should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Axia is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interest will be adversely affected by continued approval of Axia's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 26, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2932 Filed 2–2–01; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IN01–1–001]**

### Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company; Notice of Refund and Disgorgement Report

January 30, 2001.

Take notice that on December 12, 2000, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (the Companies) filed a Refund and Disgorgement Report pursuant to a Stipulation and Consent Agreement in resolution of Docket No. IN01–1–000. Part IV, Para. 2 of the Stipulation required the Companies to file the report with the Commission 30 days after Columbia Gas and Columbia Gulf discharged their refund and disgorgement obligation.

The Companies states that the report sets forth the amount that each party will receive as either a refund or disgorgement and the date of payment.

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 February 5, 2001. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2923 Filed 2–2–01; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–555–003]**

### Dominion Transmission, Inc., Dominion Resources, Inc. and Consolidated Natural Gas Company; Notice of Compliance Filing

January 30, 2001.

Take notice that on January 24, 2001, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, with an effective date of September 23, 2000:

Second Substitute Original Sheet No. 1092.

DTI states that the filing is made to correct an inadvertent error in DTI's January 2, 2001 compliance filing in the captioned proceedings, and to comply with the Commission's December 15, 2000 order, 93 FERC ¶ 61,284 (2000). As directed by the Commission, DTI has stated in its tariff that information regarding its personnel and facilities shared with its affiliated energy companies is available on its website.

DTI states that copies of its filing have been served upon DTI's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, 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).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2925 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–1041–000]**

### El Dorado Energy, LLC; Notice of Filing

January 30, 2001.

Take notice that on January 24, 2001, El Dorado Energy, LLC. (El Dorado) tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, First Revised Sheet No. 2, superseding Original Sheet No. 2, to El Dorado's FERC Electric Tariff, Original Volume No. 1. The revised tariff sheet provides of the sale of electric energy, capacity, and ancillary services to San Diego Gas & Electric Company (SDG&E), an affiliate of El Dorado.

El Dorado states that its currently effective rate schedules do not provide for sales to SDG&E. It further states that SDG&E has, until recently, been required by the California Public Utilities Commission (CPUC) to purchase all of the power required for its bundled retail customers through the California Power Exchange Corporation (the PX). In September 2000, however, the CPUC authorized SDG&E to make bilateral purchases in order to increase its ability to hedge against volatile prices. According to El Dorado, CPUC rules provide that SDG&E's purchases from affiliates must be subject to open and competitive bidding.

The purpose of the instant filing, El Dorado states, is to enable El Dorado to make sales of energy and ancillary services to SDG&E on a bilateral basis under the requirement of open, competitive bidding contained in the CPUC's rules. In light of current simply circumstances in California, El Dorado asks for Commission action on its filing by January 29, 2001, and proposes an effective date for the tendered rate schedules of January 29, 2001.

El Dorado states that it has served a copy of its filing on the CPUC.

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 and protests should be filed on or before February 8, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2922 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–666–000 and ER01–666–001**

### EWO Marketing, L.P.; Notice of Issuance of Order

January 30, 2001.

EWO Marketing, L.P. (EWO) submitted for filing a rate schedule under which EWO will engage in wholesale electric power and energy transactions at market-based rates. EWO also requested waiver of various Commission regulations. In particular, EWO requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EWO.

On January 25, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EWO should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EWO is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and

compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EWO's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 26, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC. 20426. The Order may also be viewed on the Internet at *http://www/ferc/fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2933 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–212–000]**

### Gulf South Pipeline Company, LP; Notice of Waiver Request

January 30, 2001.

Take notice that on January 23, 2001 Gulf South Pipeline Company, LP (Gulf South) tendered for filing a request for a one-time waiver of certain notice and filing requirements of Section 13.3 of its FERC Gas Tariff, Sixth Revised Volume 1, relating to accepting small customer exemption affidavits out of time. Gulf South requests that it be allowed to accept the small customer affidavits.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 5, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2929 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–203–000]**

### Iroquois Gas Transmission System, L.P., Notice of Fuel Calculations

January 30, 2001.

Take notice that on December 29, 2000, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing its schedules which reflect calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period July 1, 2000 through December 31, 2000.

Iroquois states that data from the data base during this period had to be verified to ensure accurate and complete information. Iroquois states that the schedules attached to the filing included calculations supporting each of the following three components of Iroquois' composite Measurement Variance/Fuel Use Factor:

(1) Lost and unaccounted-for gas (Measurement Variance Factor);
(2) Fuel use associated with the transportation of gas by others on behalf of Iroquois (Account 858 Fuel Use Factor); and
(3) Fuel use associated with the transportation of gas on Iroquois' pipeline system (Account 854 Fuel Use Factor).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 5, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online.rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2928 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–69–000]**

### Petal Gas Storage, L.L.C.; Notice of Application

January 30, 2001.

On January 23, 2001, Petal Gas Storage, L.L.C. (Petal), 1001 Louisiana Street, P.O. Box 2511, Houston, Texas 77002, filed in Docket No. CP01–69–000 an application pursuant to Section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing Petal to construct and operate transportation facilities in Mississippi having a capacity of 700,000 Mcf per day, to connect its existing storage complex with several interstate pipelines, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Specifically, Petal proposes to construct:

(a) 58.7 miles of new bi-directional 36-inch diameter pipeline extending from Petal's existing storage header in Forrest County, Mississippi through Jones and Jasper Counties, Mississippi and terminating at proposed interconnects with the interstate pipeline facilities of Southern Natural Gas Company (Southern Natural) and Destin Pipeline Company, L.L.C. (Destin) near Enterprise in Clarke County, Mississippi;

(b) a new 9,000 horsepower compressor station consisting of two gas driven compressor units near Heidelberg in Jasper County, Mississippi;

(c) 0.3 miles of new bi-directional 36-inch diameter pipeline extending from the proposed compressor station to a new interconnect with the interstate pipeline facilities of Transcontinental Gas Pipe Line Corporation (Transco) in Jasper County, Mississippi;

(d) new metering facilities at the proposed interconnects with Southern Natural Destin, and Transco;

(e) a bi-directional pig launcher/receiver trap adjacent to the proposed Destin Meter Station; and

(f) certain mainline block valves at six locations along the proposed pipeline.

Petal estimates that the proposed facilities will cost about $94,343,700.

Petal also requests that the Commission approve Petal's new firm and interruptible gas transportation services as set forth in Petal's pro forma Tariff Volume No. 1 filed in Exhibit P of the application, revisions to its existing tariff, and for authorization to charge negotiated rates for transportation services. Petal states that the pro forma tariff sheets (i) add Rate Schedule FTS, Rate Schedule ITS, and a Statement of Rates for Transportation Services; (ii) make conforming changes to Petal's General Terms and Conditions; (iii) update references to Petal to reflect its reorganization as a limited liability company; (iv) correct designations of certain tariff sheets that have been inappropriately designated as being in ''Revised'' Volume No. 1; and (v) conform Petal's tariff with the requirements of Order No. 637.

Petal states that it has entered into a 20-year firm transportation precedent agreement with Southern Company Services (Southern Company) for the full 700,000 Mcf per day of capacity and requests approval of certain deviations in the transportation agreement from its pro forma Form of Firm Transportation Service Agreement. Petal states that it intends to continue charging market based rates for its existing storage services and states that the new facilities and transportation services do not affect its market power status.

Finally, Petal requests that the Commission grant any waivers that the Commission may deem necessary to grant the relief and issue the certificate and approvals requested in the application including any waivers of tariff provisions deemed necessary to permit Southern Company, acting as agent for its affiliated operating electric utilities to apportion capacity among them.

Any questions regarding this application should be directed to Susan T. Halbach, Senior Counsel, P.O. Box 2511, Houston, Texas 77002.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 20, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2921 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–571–002]**

## Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 30, 2001.

Take notice that on January 25, 2001, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective on February 1, 2001.

REGT states that the purpose of this filing is to make modifications to its tariff to permit flexible nomination procedures to become effective, consistent with the Commission's Order dated November 8, 2000 in the above-reference proceeding.

REGT states that a copy of this filing has been mailed to its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of 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). Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2926 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–55–002]**

### WestGas InterState, Inc.; Notice of Compliance Filing

January 30, 2001.

Take notice that on January 24, 2001, WestGas InterState, Inc. (WGI) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 47B, with an effective date of November 1, 2000.

WGI states that the purpose of the filing is to permit point operators to net and trade imbalances, in compliance with the letter order issued by the Director, Division of Tariffs and Rates—West in the above-captioned proceeding on January 9, 2001.

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 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Rooom. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2927 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–537–000 and ER01–538–000]**

### Westmoreland—LG&E Partners; Notice of Issuance of Order

January 30, 2001.

Westmoreland—LG&E Partners (Westmoreland) submitted for filing a rate schedule under which Westmoreland will engage in a wholesale electric power and energy transactions at market-based rates. Westmoreland also requested waiver of various Commission regulations. In particular, Westmoreland requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Westmoreland.

On January 25, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability to Westmoreland should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Westmoreland is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Westmoreland's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 26, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2931 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–1036–000, et al.]**

### Electric Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 26, 2001.

Take notice that the following filings have been made with the Commission:

**1. Electric Energy, Inc.**

[Docket No. ER01–1036–000]

Take notice that on January 23, 2001, Electric Energy, Inc. (EEInc.), tendered for filing an executed Transmission Service Agreement for Firm Point-to-Point Transmission Service between EEInc., and Ameren Energy, Inc., (Ameren). Under the Transmission Service Agreement, EEInc., will provide Point-to-Point Transmission Service to Ameren pursuant to EEInc.'s open access transmission tariff filed in compliance with Order No. 888 and allowed to become effective by the Commission.

EEInc. has requested that the Service Agreement be allowed to become effective as of April 1, 2001.

Copies of this filing have been sent to Ameren.

*Comment date:* February 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

**2. Southwest Power Pool, Inc.**

[Docket No. ER01–1037–000]

Take notice that on January 23, 2001, Southwest Power Pool, Inc. (SPP), tendered for filing eleven executed service agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service with Tenaska Power Services Company, Tex-La Electric Cooperative of Texas, Inc., Western Resources Generation Services and Electric Clearinghouse, Inc. (ECI) (collectively, Transmission Customers).

SPP seeks an effective date of June 1, 2001 for the service agreement with ECI, and an effective date of January 1, 2001 for the service agreements with the remaining Transmission Customers.

Copies of this filing were served on the Transmission Customers.

*Comment date:* February 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

**3. Southwest Power Pool, Inc.**

[Docket No. ER01–1039–000]

Take notice that on January 23, 2001, Southwest Power Pool, Inc. (SPP), tendered for filing seven executed service agreements for Firm Point-to-Point Transmission Service with Sempra Energy Trading Corporation (Sempra) and Southwestern Public Service Company (SPS).

SPP seeks an effective date of March 1, 2001 for one of the service agreements with SPS, and an effective date of January 1, 2001 for the remaining service agreements with Sempra and SPS.

Copies of this filing were served on Sempra and on SPS.

*Comment date:* February 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

**4. Illinois Power Company**

[Docket No. RT01–84–000]

Take notice that on January 16, 2001, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521–2200 tendered for filing a Compliance Filing pursuant to order No. 2000 and 18 CFR 35.34.

Illinois Power states that it has served a copy of the filing on the Illinois Commerce Commission and all customers having service agreements with Illinois Power under its Open Access Transmission Tariff.

*Comment date:* March 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

**5. Midwest Independent Transmission System Operator, Inc.**

[Docket No. RT01–87–000]

Take notice that on January 16, 2001, pursuant to section 35.34(h) of the Commission's regulations, 18 CFR 35.34(h), and the Commission's July 20, 2000 ''Notice of Guidance for Processing Order No. 2000 Filings'' in Docket No. RM99–2–000, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an Order No. 2000 compliance filing.

*Comment date:* March 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

**6. American Transmission Company LLC**

[Docket No. RT01–91–000]

Take notice that on January 16, 2001, American Transmission Company LLC (ATCLLC) tendered for filing a Supplemental RTO Compliance Filing.

*Comment date:* March 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

**7. Alliant Energy Corporate Services, Inc. (on behalf of IES Utilities, Inc. and Interstate Power Company), American Transmission Company LLC, Central Illinois Light Company, Cinergy Corp. (on behalf of Cincinnati Gas & Electric Company, PSI Energy, Inc., and Union Light, Heat & Power), Hoosier Energy Rural Electric Coop., Inc., Kentucky Utilities Company, Louisville Gas & Electric Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and Southern Indiana Gas & Electric Company**

[Docket No. RT01–96–000]

Take notice that on January 16, 2001, the Specified Transmission Owners listed above submitted for filing certain documents intended to satisfy their compliance filing obligations under Order Nos. 2000 and 2000–A.

Copies of this filing were served upon all affected state commissions and affected transmission customers of the Specified Transmission Owners.

*Comment date:* March 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

**8. Ameren Corporation, et al.**

[Docket No. RT01–88–000]

Take notice that on January 16, 2001, pursuant to section 35.34(h) of the Commission's regulations, 18 CFR 35.34(h), and the Commission's July 20, 2000 ''Notice of Guidance for Processing Order No. 2000 Filings'' in Docket No. RM99–2–000, Ameren Corporation (Ameren), on behalf of Union Electric Company and Central Illinois Public Service Company; American Electric Power Service Corporation, on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company; Consumers Energy Company; Exelon Corporation, on behalf of Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd); FirstEnergy Corp., on behalf of American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company; Illinois Power Company (Illinois Power); The Dayton Power and Light Company (DP&L); The Detroit Edison Company; and Virginia Electric and Power Company (collectively, the Alliance Companies) jointly submitted an Order No. 2000 compliance filing.

The Alliance Companies state that the Alliance Regional Transmission Organization (Alliance RTO) satisfies the minimum characteristics and functions for a regional transmission organization as set forth in Order No. 2000. Applicants further state that they request that the Commission accept amendments to the Alliance Agreement and grant authorization to Ameren, ComEd, Illinois Power and DP&L to transfer ownership and/or functional control of their transmission facilities to the Alliance RTO.

*Comment date:* March 12, 2001, 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. 01–2919 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–803–001, et al.]**

### PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

January 29, 2001.

Take notice that the following filings have been made with the Commission:

**1. PECO Energy Company**

[Docket No. ER00–803–001]

Take notice that on January 25, 2001, PECO Energy Company (PECO) submitted a compliance filing consisting of corrected sheets to an Interconnection Agreement between PECO and the joint owners of the Peach Bottom Atomic Power Station designated as PECO's Rate Schedule FERC No. 134, to be effective on 12 January 2001. Copies of this filing were served on the joint owners of the generating facility, the Pennsylvania Public Utility Commission and parties on the service list in this docket.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**2. San Diego Gas & Electric Company**

[Docket No. ER01–322–001]

Take notice that on January 24, 2001, San Diego Gas & Electric Company filed with the Federal Energy Regulatory Commission (Commission) a refund report in compliance with the Commission's order dated December 29, 2000 (93 FERC ¶ 61,333).

*Comment date:* February 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

**3. Consumers Energy Company and Michigan Electric Transmission Company**

[Docket No. ER01–414–001]

Take notice that on January 23, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing the following tariff sheets as part of its FERC Electric Tariff, Original Volume No. 1 in compliance with the January 10, 2001 order issued in this proceeding:

Sub Original Sheet Nos. 117, 122, 130 through 135, 139, 141, 142, 143 and 153 and Original Sheet Nos. 117A, 135A, 139A and 153A.

Copies of the filing were served upon the Michigan Public Service Commission and upon those on the official service list in this proceeding.

*Comment date:* February 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

**4. Reliant Energy Aurora, LP**

[Docket No. ER01–687–001]

Take notice that on January 25, 2000, Reliant Energy Aurora, LP (Reliant Aurora) tendered for filing its FERC Electric Rate Schedule No. 1 authorizing Reliant Aurora to make sales at market-based rates.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**5. Commonwealth Edison Company**

[Docket No. ER01–715–001]

Take notice that on January 25, 2001, Commonwealth Edison Company (ComEd) tendered for filing an amendment to its December 19, 2000, filing of a Firm Transmission Service Agreement (Agreement) supplemented by Network Upgrade Agreement with Wisconsin Electric Power Company (WEP) and two firm Agreements with Commonwealth Edison Company, in its wholesale merchant function (WMD) in the above-referenced proceeding.

The errata notice does not affect the effective dates requested by ComEd in the above-referenced proceeding.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**6. WPS Resources Operating Companies**

[Docket No. ER01–1040–000]

Take notice that on January 24, 2001, WPS Resources Operating Companies (WPSR) filed a revised executed service agreement with Washington Island Electric Cooperative (Washington Island) for ancillary services and distribution service under WPSR's open access transmission tariff, FERC Electric Tariff, First Revised Volume No. 1 (OATT).

WPSR requests a January 1, 2001 effective date.

Copies of the filing were served upon Washington Island, the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

*Comment date:* February 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

**7. Tucson Electric Power Company**

[Docket No. ER01–1042–000]

Take notice that on January 23, 2001, Tucson Electric Power Company tendered for filing one (1) umbrella service agreement (for short-term firm service) and one (1) service agreement (for non-firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. ER00–771–000.

The details of the service agreements are as follows:

Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of January 3, 2001 by and between Tucson Electric Power Company and Tractebel Energy Marketing, Inc.—FERC Electric Tariff Vol. No. 2, Service Agreement No. 149. No service has commenced at this time.

Form of Service Agreement for Non-Firm Point-to Point Transmission Service dated as of January 3, 2001 by and between Tucson Electric Power Company and Tractebel Energy Marketing, Inc.—FERC Electric Tariff Vol. No. 2, Service Agreement No. 150. No service has commenced at this time.

*Comment date:* February 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

**8. South Carolina Electric & Gas Company**

[Docket No. ER01–1043–000]

Take notice that on January 24, 2001, South Carolina Electric & Gas Company (SCE&G) filed a network integration transmission service agreement between SCE&G and Southeastern Power Administration (SPA).

SCE&G states that a copy of the filing was served on SPA.

*Comment date:* February 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

**9. Riverside Generating Company, L.L.C.**

[Docket No. ER01–1044–000]

Take notice that on January 24, 2001, Riverside Generating Company, L.L.C. (Riverside) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1 to become effective as of the date specified by the Federal Energy Regulatory Commission.

Riverside intends to sell electric power at wholesale at rates, terms, and conditions to be mutually agreed to with the purchasing party. Riverside's tariff provides for the sale of electric energy and capacity at agreed prices.

*Comment date:* February 14, 2001, 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. 01–2920 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–3727–003, et al.]**

## Potomac Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 30, 2001.

Take notice that the following filings have been made with the Commission:

### 1. Potomac Electric Power Company

[Docket No. ER00–3727–003]

Take notice that on January 17, 2001, Potomac Electric Power Company (Pepco) tendered for filing a supplement to its December 22, 2000, filing. Pepco hereby submits signature pages with its executed Service Agreement No. 20 under Pepco's FERC Electric Tariff, First Revised Volume No. 5 with Southern Company Energy Marketing L.P., (SCEM). The service agreement had been previously accepted for filing by the Commission in Potomac Electric Power Company, *et al,* 93 FERC ¶ 61,240 (2000).

The service agreement became effective on December 19, 2000.

*Comment date:* February 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 2. Entergy Services, Inc.

[Docket No. ER01–1046–000]

Take notice that on January 25, 2001, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an Interconnection and Operating Agreement with Duke Energy Ruston, LLC (Duke Ruston), and a Generator Imbalance Agreement with Duke Ruston.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 3. Central Maine Power Company

[Docket No. ER01–1047–000]

Take notice that on January 25, 2001, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to section 35.12 of the Federal Energy Regulatory Commission's (the Commission) Regulations, 18 CFR 35.12, an executed interconnection agreement (the Agreement) between CMP and Regional Waste System, Inc., (RWS).

The Agreement is intended to replace the Purchased Power Agreement between the parties, which expired on December 31, 2000.

As such, CMP is requesting that the Agreement become effective January 1, 2001.

Copies of this filing have been served upon the Commission, the Maine Public Utilities Commission, and RWS.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 4. Entergy Services, Inc.

[Docket No. ER01–1048–000]

Take notice that on January 25, 2001, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing a modified and redesignated Interconnection and Operating Agreement with Acadia Power Partners, LLC (Acadia), and a redesignated Generator Imbalance Agreement with Acadia.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 5. Central Vermont Public Service Corporation

[Docket No. ER01–1049–000]

Take notice that on January 25, 2001, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a revised Network Integration Service Agreement and Network Operating Agreement (Revised Service Agreement) with Vermont Electric Cooperative, Inc. (VEC), First Revised Service Agreement No. 15 under FERC Electric Tariff, First Revised Volume No. 7. The Revised Service Agreement includes a new delivery point and updates the various loads and resources of VEC.

Copies of the filing were served upon VEC and the Vermont Public Service Board.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 6. Commonwealth Edison Company

[Docket No. ER01–1050–000]

Take notice that on January 25, 2001, Commonwealth Edison Company (ComEd), tendered for filing one amended Network Integration Transmission Service Agreement (NSA) between ComEd and Central Illinois Light Co., (CILR). ComEd asks that the CILR NSA supersede and be substituted for the NSA with CILR previously filed on November 22, 1999 in Docket No. ER00–5622–000. The NSA has been amended to change the termination date set forth in Section 3.2. The NSA governs ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of January 1, 2001 for the CILR NSA and therefore seeks waiver of the Commission's notice requirements.

Copies of this filing were served on CILR.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 7. Elwood Energy II, LLC

[Docket No. ER01–1051–000]

Take notice that on January 25, 2001, Elwood Energy II, LLC tendered for filing its proposed FERC Electric Market-Based Sales Tariff and request for certain waivers of the Commission's Regulations.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

### 8. Southern Company Services, Inc.

[Docket No. ER01–1052–000]

Take notice that on January 25, 2001, Southern Company Services, Inc., by and on behalf of Alabama Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company and Savannah Electric and Power Company, tendered for filing letter agreements with Florida Power and Light Company, Florida Power Corporation and Jacksonville Electric

Authority. The purpose of the filed letter agreements is to address certain fuel accounting procedures for use in connection with unit power sales agreements.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**9. Peco Energy Company**

[Docket No. ER01–1053–000]

Take notice that on January 25, 2001, PECO Energy Company (PECO), tendered for filing under section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Power Team Confirmation Agreement dated December 19, 2000 with SMARTENERGY.com (SMARTENERGY) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 26, 2001 for the Agreement.

PECO states that copies of this filing have been supplied to SMARTENERGY.com and to the Pennsylvania Public Utility Commission.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**10. American Transmission Company LLC**

[Docket No. ER01–1054–000]

Take notice that on January 25, 2001, American Transmission Company LLC (ATCLLC), tendered for filing a Network Operating Agreement and Network Integration Transmission Service Agreement between ATCLLC and Prairie du Sac Utilities.

ATCLLC requests an effective date of January 1, 2001.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**11. Elwood Energy III, LLC**

[Docket No. ER01–1055–000]

Take notice that on January 25, 2001, Elwood Energy III, LLC tendered for filing its proposed FERC Electric Market-Based Sales Tariff and its request for certain waivers of the Commission's Regulations.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**12. Ameren Services Company**

[Docket No. ER01–1056–000]

Take notice that on January 25, 2001, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between ASC and Madison Gas and Electric Company. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to Madison Gas and Electric Company pursuant to Ameren's Open Access Transmission Tariff.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**13. Automated Power Exchange, Inc.**

[Docket No. ER01–1057–000]

Take notice that on January 25, 2001, Automated Power Exchange, Inc. (APX), tendered for filing a rate schedule under which APX will offer power exchange services in the APX New England Market.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**14. Automated Power Exchange, Inc.**

[Docket No. ER01–1058–000]

Take notice that on January 25, 2001, Automated Power Exchange, Inc. (APX), tendered for filing a new rate schedule under which APX will offer power exchange services in the APX PJM Market.

APX requests that the new APX Rate Schedule be accepted to become effective as of January 26, 2001.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**15. Ameren Services Company**

[Docket No. ER01–1059–000]

Take notice that on January 25, 2001, Ameren Services Company (ASC), tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Ameren Energy, as Agent for Ameren Services Company and Western Resources, Cinergy Services, Inc., Tenaska Power Services Company, Xcel Energy, Illinois Power Company and Reliant Energy Services, Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

*Comment date:* February 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

**16. PPL Montour, LLC**

[Docket No. EG01–43–000]

Take notice that on January 18, 2001, as amended on January 29, 2001, PPL Montour, LLC tendered for filing an Amended and Restated Application for Redetermination of Status as an Exempt Wholesale Generator amending previous filings made on December 5 and December 6, 2000.

*Comment date:* February 20, 2001, 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.

**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. 01–2952 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Tendered for Filing With the Commission, Establishing Procedures for Relicensing, and a Deadline for Submission of Final Amendments

January 30, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–271–062.

c. *Date Filed:* December 18, 2000.

d. *Applicant:* Entergy Arkansas, Inc.

e. *Name of Project:* Carpenter-Remmel Hydroelectric Project.

f. *Location:* Located on the Ouachita River in Garland and Hot Spring Counties, Arkansas, and immediately downstream from the U.S. Army Corps of Engineers Blakely Mountain Dam. The Carpenter-Remmel Hydroelectric Project includes the Carpenter

development at river mile 461 and the Remmel development at river mile 450. There are 34.3 acres of federally owned lands within the project boundary around Lake Hamilton which are under the supervision of the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. W. Henry Jones, Relicensing Project Manager, Entergy Fossil Operations, P.O. Box 218, Jones Mills, AR 72105, (501) 844–2148 or email: *wjones7@Entergy.com.*

Mr. Hugh T. McDonald, President, Entergy Arkansas, Inc., 425 West Capitol Avenue, Little Rock, AR 72201, (501) 377–4372.

i. *FERC Contact:* Ed Lee, (202) 219–2809 or E–Mail *ed.lee@ferc.fed.us.*

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commissions, 888 First Street, NE, Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

j. The existing Carpenter-Remmel Project consists of two developments: (1) the 56,000-kilowatt (kW) Carpenter Development located furthest upstream; and (2) the 9,300-kW Remmel Development located approximately 11.78 miles downstream. The project has a total installed capacity of 65,300-kW and an average annual generation of about 188,800 megawatt hours. All generated power is utilized within the applicant's electric utility system.

k. 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 2–A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

l. *Procedural schedule and final amendments:* The applicants will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing
Notice soliciting final terms and conditions
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of the notice soliciting final terms and conditions.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2924 Filed 2–2–01; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting

January 31, 2001.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** February 7, 2001, 10 a.m.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note:** Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** David P. Boergers, Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**759th—Meeting—February 7, 2001, Regular Meeting (10:00 a.m.)**

**Consent Agenda—Markets, Tariffs and Rates—Electric**

CAE–1.
  OMITTED
CAE–2.
  DOCKET# ER01–627, 000, EXELON GENERATION, LLC
  OTHER#S ER01–627, 001, EXELON GENERATION, LLC
  ER01–628, 000, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA
  ER01–628, 001, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA
CAE–3.
  OMITTED
CAE–4.
  OMITTED
CAE–5.
  OMITTED
CAE–6.
  DOCKET# ER00–2362, 000, AMEREN SERVICES COMPANY
CAE–7.
  DOCKET# ER01–797, 000, PACIFICORP
  OTHER#S EL01–21, 000, CHEYENNE LIGHT, FUEL AND POWER COMPANY V. PACIFICORP
  ER01–793, 000, PACIFICORP
CAE–8.
  DOCKET# ER00–2669, 000, CENTRAL MAINE POWER COMPANY
CAE–9.
  DOCKET# OA96–28, 000, PACIFIC GAS AND ELECTRIC COMPANY
  OTHER#S ER95–980, 000, PACIFIC GAS AND ELECTRIC COMPANY
  OA96–28, 002, PACIFIC GAS AND ELECTRIC COMPANY
  OA96–28, 001, PACIFIC GAS AND ELECTRIC COMPANY
  OA97–619, 000, PACIFIC GAS AND ELECTRIC COMPANY
CAE–10.
  DOCKET# EC00–55, 001, CP&L HOLDINGS, INC. ON BEHALF OF ITSELF AND ITS PUBLIC UTILITY SUBSIDIARIES AND FLORIDA PROGRESS CORPORATION ON BEHALF OF ITSELF AND ITS PUBLIC UTILITY SUBSIDIARIES
  OTHER#S ER00–1520, 002, CP&L HOLDINGS, INC. ON BEHALF OF ITSELF AND ITS PUBLIC UTILITY SUBSIDIARIES AND FLORIDA PROGRESS CORPORATION ON BEHALF OF ITSELF AND ITS PUBLIC UTILITY SUBSIDIARIES
CAE–11.
  OMITTED
CAE–12.
  DOCKET# EL00–94, 000, CITIZEN POWER INC. V. FIRSTENERGY CORPORATION AND THE FIRSTENERGY OPERATING COMPANIES
  OTHER#S EL99–39, 000, CITIZEN POWER INC. V. DUQUESNE LIGHT COMPANY
  EL99–40, 000, AMERICAN PUBLIC POWER ASSOCIATION AND CITIZEN POWER, INC
CAE–13.
  OMITTED
CAE–14.
  DOCKET# ER01–736, 000, AUTOMATED POWER EXCHANGE, INC

**Consent Agenda—Markets, Tariffs and Rates—Gas**

CAG–1.
  OMITTED
CAG–2.
  OMITTED
CAG–3.
  OMITTED
CAG–4.
  DOCKET# RP99–308, 003, NORTHWEST ALASKAN PIPELINE COMPANY
  OTHER#S RP99–308, 001, NORTHWEST ALASKAN PIPELINE COMPANY
  RP00–69, 000, NORTHWEST ALASKAN PIPELINE COMPANY
  RP00–285, 000, NORTHWEST ALASKAN PIPELINE COMPANY

RP01–103, 000, NORTHWEST ALASKAN PIPELINE COMPANY
CAG–5.
DOCKET# RP96–275, 006, TENNESSEE GAS PIPELINE COMPANY
CAG–6.
DOCKET# RP00–247, 002, COLORADO INTERSTATE GAS COMPANY
CAG–7.
DOCKET# RP95–112, 026, TENNESSEE GAS PIPELINE COMPANY
OTHER#S RP95–112, 027, TENNESSEE GAS PIPELINE COMPANY
CAG–8.
DOCKET# RP00–298, 004, KERN RIVER GAS TRANSMISSION COMPANY
CAG–9.
DOCKET# RP00–205, 005, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
CAG–10.
DOCKET# RP00–428, 001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–11.
DOCKET# RP00–566, 001, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
CAG–12.
DOCKET# MG01–1, 000, TRANSWESTERN PIPELINE COMPANY
CAG–13.
DOCKET# MG01–2, 000, FLORIDA GAS TRANSMISSION COMPANY
CAG–14.
DOCKET# MG01–3, 000, NORTHERN NATURAL GAS COMPANY
CAG–15.
DOCKET# MG01–5, 000, NORTHERN BORDER PIPELINE COMPANY
CAG–16.
DOCKET# MG01–7, 000, SEA ROBIN PIPELINE COMPANY
CAG–17.
DOCKET# MG00–7, 001, TEXAS GAS TRANSMISSION CORPORATION
CAG–18.
DOCKET# RP97–406, 029, DOMINION TRANSMISSION, INC
OTHER#S RP01–74, 004, DOMINION TRANSMISSION, INC

**Consent Agenda—Energy Projects—Hydro**

CAH–1.
DOCKET# P–10893, 003, HY POWER ENERGY COMPANY
CAH–2. OMITTED
CAH–3.
DOCKET# P–184, 060, EL DORADO IRRIGATION DISTRICT
CAH–4.
DOCKET# EL01–11, 000, LESTER C. REED V. GEORGIA POWER COMPANY
OTHER#S P–1951, 075, GEORGIA POWER COMPANY
CAH–5.
DOCKET# P–11685, 002, STOCKPORT MILL COUNTRY INN
CAH–6.
DOCKET# P–5, 058, PPL MONTANA, LLC, AND CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

**Consent Agenda—Energy Projects—Certificates**

CAC–1.
DOCKET# CP00–166, 000, WILLIAMS GAS PIPELINES CENTRAL, INC
CAC–2.
DOCKET# CP01–50, 000, THE MONTANA POWER COMPANY AND MONTANA POWER, L.L.C
CAC–3.
DOCKET# CP01–51, 000, THE MONTANA POWER COMPANY AND MONTANA POWER, L.L.C
CAC–4.
DOCKET# CP97–142, 001, DOMINION TRANSMISSION, INC
CAC–5.
DOCKET# CP01–14, 000, MAHUE CONSTRUCTION COMPANY.
CAC–6.
DOCKET# CP01–62, 000, NORTHWEST PIPELINE CORPORATION

**Energy Projects—Hydro Agenda**

H–1. RESERVED

**Energy Projects—Certificates Agenda**

C–1. RESERVED

**Markets, Tariffs and Rates—Electric Agenda**

E–1. RESERVED

**Markets, Tariffs and Rates—Gas Agenda**

G–1. RESERVED

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–3032 Filed 2–2–01; 11:13 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6940–9]**

## Agency Information Collection Activities: Continuing Collection; Comment Request; Annual Public Water Systems Compliance Report

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Annual Public Water Systems Compliance Report, EPA ICR number 1812.02, OMB Control Number 2040–0186. The current ICR expires March 31, 2001. 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 April 6, 2001.

**ADDRESSES:** United States Environmental Protection Agency; Compliance Assistance and Sector Programs Division (2224A); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the Supplementary Information.

**FOR FURTHER INFORMATION CONTACT:** Ken Harmon, (202) 564–7049, fax (202) 564–7083, E-mail *harmon.kenneth@epa.gov*, and refer to ICR No. 1812.01.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* States, Tribes, and territories that have primary enforcement authority and meet the definition of ''state'' under the Safe Drinking Water Act (Act).

*Title:* Annual Public Water Systems Compliance Report, EPA ICR number 1812.02, OMB Control Number 2040–0186. The current ICR expires March 31, 2001.

*Abstract:* Section 1414 (c)(3)(A) of the Safe Drinking Water Act requires that each state that has primary enforcement authority under the Act shall prepare, make readily available to the public, and submit to the Administrator of EPA, an annual report of violations of national primary drinking water regulations in the state. The states' reports are to include violations of maximum contaminant levels, treatment requirements, variances and exemptions, and monitoring requirements determined to be significant by the Administrator after consultation with the states. Section 1414(c)(3)(B) of the Safe Drinking Water Act requires EPA to prepare and make available to the public an annual report that summarizes and evaluates the reports submitted by the states pursuant to Section 1414(c)(3)(A). EPA's annual national report must also provide specified information about implementation of the public water system supervision system on Indian reservations and make recommendations concerning the resources necessary to improve compliance with the Safe Drinking Water Act. The States have already prepared and published three annual reports. EPA has prepared three national reports and published two. The third annual national report has been prepared and its publication is pending.

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. In an effort to minimize a state's burden in preparing its annual statutorily-

required report, EPA issued guidance that explains what Section 1414(c)(3)(A) requires and provides model language and reporting templates. EPA also annually makes available to the states a computer query that generates for each state (from information states are already required to submit to EPA's national database on a quarterly basis) the required violations information in a table consistent with the reporting template in EPA's guidance.

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 annual public reporting and recordkeeping burden for this collection of information is estimated to average 208 hours for annual response. The number of respondents is 54 states, commonwealths and territories. The estimated total annual hour burden is 11,232 hours. The estimated total annualized cost burden is $669,400. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 26, 2001.

**Karin Leff,**

*Acting Director, Compliance Assistance and Sector Programs Division.*

[FR Doc. 01–2973 Filed 2–2–01; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–00–37–C (Auction No. 37); DA 01–119]**

## Notice and Filing Requirements for FM Broadcast Construction Permits Auction, Minimum Opening Bids and Other Procedural Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of certain FM Broadcast construction permits and also provides the final inventory of vacant FM allotments to be made available for this auction.

**DATES:** Auction No. 37 is scheduled for May 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Auctions and Industry Analysis Division: Kenneth Burnley, Legal Branch, or Jeff Crooks, Auctions Operations Branch at (202) 418–0660; Barbara Sibert, Auctions Operations Branch at (717) 338–2888. Audio Services Division: Lisa Scanlan at (202) 418–2700. Media Contact: Mark Rubin at (202) 418–2924.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released January 19, 2001. The complete text of the public notice, including Attachments A through H, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, N.W. Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

List of Attachments available at the FCC:

Attachment A—Construction Permits To Be Auctioned
Attachment B—FCC Auction Seminar Registration Form
Attachment C—Electronic Filing and Review of the FCC Form 175
Attachment D—Guidelines for Completion of FCC Form 175 and Exhibits
Attachment E—Auction—Specific Instructions for FCC Remittance Advice (Form 159)
Attachment F—FCC Bidding Preference/Remote Software Order Form
Attachment G—Accessing the FCC Network Using Windows 95/98
Attachment H—Summary Listing of Documents (Anti-Collusion)

### I. General Information

*A. Introduction*

This public notice announces the procedures and minimum opening bids for the upcoming auction of certain FM Broadcast construction permits (''Auction No. 37''). On September 25, 2000, the Mass Media Bureau (''MMB'') and the Wireless Telecommunications Bureau (''WTB'') (collectively, the ''Bureaus'') released the *Auction No. 37 Comment Public Notice,* 65 FR 59841 (October 6, 2000), seeking comment on the establishment of reserve prices and/or minimum opening bids for Auction No. 37, in accordance with the Balanced Budget Act of 1997. On September 29, 2000, the Bureaus released a second Public Notice, stating that eight additional vacant FM allotments would be included in Auction No. 37 (*Auction No. 37 Additional Comment Public Notice, 65 FR 59841 (October 6, 2000*). In addition, the Bureaus sought comment on procedures to be used in Auction No. 37. The Bureaus received twenty comments and three reply comments in response to the *Auction No. 37 Comment Public Notice* and the *Auction No. 37 Additional Comment Public Notice.*

*B. Scheduling*

The *Auction No. 37 Comment Public Notice* announced that Auction No. 37 would begin on February 21, 2001. In this public notice, the Bureaus announce the beginning date of Auction No. 37 has been rescheduled to May 9, 2001.

*C. Construction Permits To Be Auctioned*

Auction No. 37 will consist of 355 construction permits in the FM Broadcast service for stations throughout the United States and Guam. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures, designated for use in the indicated community. As stated in the *Broadcast First Report and Order,* 63 FR 48615 (September 11, 1998), applicants may apply for any vacant FM allotment, as specified in

Attachment A; applicants specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for the FM allotment will be awarded by competitive bidding procedures. The reference coordinates for each vacant FM allotment are also listed in Attachment A.

One commenter suggests that the Bureaus should treat any allotment that has only one bidder as not being mutually exclusive. As stated in the *Broadcast First Report and Order,* all pending mutually exclusive applications for broadcast services must be resolved through a system of competitive bidding. Accordingly, for a specific FM allotment, if the Commission were to receive only one FCC Form 175, Application to Participate in an FCC Auction (''short-form application''), and, thus, mutual exclusivity would not exist for auction purposes, the auction for any such construction permit would cancel.

National Public Radio requests that the Commission modify its auction procedures to permit noncommercial educational broadcast applicants to apply for a noncommercial station utilizing any of the FM allotments listed in Attachment A without having to compete in an auction. However, none of the FM channels included in Auction No. 37 are reserved exclusively for noncommercial educational use, or are otherwise exempt from competitive bidding procedures, if mutually exclusive applications are filed.

Several commenters request that the Bureaus remove certain FM allotments from Auction No. 37 due to the pendency of rulemaking proceedings concerning the FM allotment, or because of other pending challenges regarding the FM channels to be auctioned. The FM allotments designated as FM71, FM160, FM189, and FM275 are hereby removed from Auction No. 37. A revised Attachment A, reflecting the deletion of the four referenced FM allotments, is appended to the Public Notice.

Two commenters request the inclusion of additional FM channels in Auction No. 37. Ganske requests that the Commission include Channel 224C2 for Sunriver, Oregon, and Satellite requests the inclusion of Channel 239A for Big Pine Key, Florida. The rulemaking proceeding to add Channel 224C2 at Sunriver, Oregon to the Table of FM Allotments is not yet final (MM Docket No. 96–7), and accordingly, FM Channel 224C2 at Sunriver, Oregon will not be added to the list of FM allotments for Auction No. 37. Big Pine Key, Florida will be included in a subsequent FM auction. The *Auction No. 37 Comment Public Notice* inadvertently included two allotments for Channel 261A at Corrigan, TX (FM 280 and FM 281) and two allotments for Channel 291A at Kerrville, TX (FM 289 and FM 290). Accordingly, duplicative listings FM 281 and FM 289 will be removed from Attachment A.

*D. Rules and Disclaimers*

1. Relevant Authority

Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to broadcast auctions, contained in Title 47, Part 73 of the Code of Federal Regulations.

Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice, the *Auction No. 37 Comment Public Notice,* the *Auction No. 37 Additional Comment Public Notice,* the *Broadcast First Report and Order,* the *Broadcast Reconsideration Order,* 64 FR 24523 (May 7, 1999) and the *New Entrant Bidding Credit Reconsideration Order,* 64 FR 44856 (August 18, 1999). Potential bidders must also familiarize themselves with Part 1, Subpart Q of the Commission's rules concerning competitive bidding proceedings.

The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC Auctions World Wide Web site at *http://www.fcc.gov/wtb/auctions.* Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 98–194 for the *Broadcast First Report and Order* and FCC 99–74 for the *Broadcast Reconsideration Order*).

2. Prohibition of Collusion

To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same market from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for construction permits in the same market are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. In Auction No. 37, for example, the rule would apply to any applicants bidding for the same market (i.e., Bethel, Alaska, Channel 252C3, Market FM1). Therefore, applicants that apply to bid for any FM construction permit in the same market would be precluded from communicating after filing the FCC Form 175 short-form application with any other applicant for a FM construction permit in that same market. However, applicants may enter into bidding agreements before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same market. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with 1.2105(c) and 73.5002. In addition, 1.65 of the Commission's rules requires an applicant to maintain

the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation.

A summary listing of documents from the Commission and the Bureaus addressing the application of the anti-collusion rules may be found in Attachment H of the Public Notice.

3. Due Diligence

Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the FM broadcast facilities. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a FCC auction represents an opportunity to become a FCC permittee in the broadcast service, subject to certain conditions and regulations. A FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does a FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 37 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 37 are strongly encouraged to continue such research during the auction.

4. Bidder Alerts

All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a construction permit, and not in default on any payment for Commission construction permits or licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, construction permit or license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 37 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

5. National Environmental Policy Act (NEPA) Requirements

The permittee must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require that, among other things, the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for broadcast facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for broadcast facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

*E. Auction Specifics*

1. Auction Date

The auction will begin on Wednesday, May 9, 2001. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all construction permits.

2. Auction Title

Auction No. 37—FM Broadcast

3. Bidding Methodology

The bidding methodology for Auction No. 37 will be a simultaneous, multiple-round, ascending auction. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

4. Pre-Auction Dates and Deadlines

Auction Seminar: March 7, 2001
Short-Form Application Filing Deadline (FCC Form 175): March 19, 2001; 6:00 p.m. ET
Orders for Remote Bidding Software: March 19, 2001; 6:00 p.m. ET
Upfront Payments (via wire transfer): April 16, 2001; 6:00 p.m. ET
Mock Auction: May 7, 2001
Auction Begins: May 9, 2001

5. Requirements for Participation

Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6:00 p.m. ET, March 19, 2001. No other application may be substituted for the FCC Form 175.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, April 16, 2001.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

6. General Contact Information

The following is a list of general contact information relating to Auction No. 37:

*General Auction Information:*
General Auction Questions, Seminar Registration, Orders for Remote Bidding Software: FCC Auctions Hotline, (888) 225–5322, Press Option #2 or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. et.

*Auction Legal Information:*
Auction Rules, Policies, Regulations: Auctions and Industry Analysis Division, Legal Branch, (202) 418–0660

*Licensing Information:*
Rules, Policies, Regulations, Licensing Issues, Engineering Issues: Audio Services Division, (202) 418–2700

*Technical Support:*
Electronic Filing Assistance, Software Downloading: FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY)
Hours of service: Monday–Friday, 7 a.m. to 10 p.m. ET, Saturday, 8 a.m. to 7 p.m., ET, Sunday, 12 noon to 6 p.m., ET

*Payment Information:*
Wire Transfers, Refunds: FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax)

*Telephonic Bidding:* Will be furnished only to qualified bidders

*FCC Copy Contractor:*
Additional Copies of Commission Documents: International Transcription Services, Inc., 445 12th Street, SW, Room CY–B400, Washington, DC 20554, (202) 314–3070

*Press Information:* Mark Rubin (202) 418–2924

*FCC Forms:*
(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area)

*FCC Internet Sites:*
*http://www.fcc.gov/wtb/auctions*
*http://www.fcc.gov/ftp://ftp.fcc.gov*

## II. Short-form (FCC Form 175) Application Requirements

Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D to the public notice. The short-form application seeks the applicant's name and address, legal classification, status, new entrant bidding credit eligibility, identification of the construction permit(s) sought, the authorized bidders and contact persons. To participate in Auction No. 37, no other application may be substituted for the FCC Form 175.

One commenter urges the Bureaus to eliminate the ''ALL'' box in the FCC Form 175 for this auction. The Bureaus agree. The capability to select the ALL box originated in the context of, and was designed for use in, wireless auctions. Use of an ALL box, however, is inappropriate in the broadcast context and accordingly, an ALL box will not be included in the FCC Form 175 for use in Auction No. 37.

### *A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)*

The Commission indicated in the *Broadcast First Report and Order*, that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership standards would apply. Therefore, in completing FCC Form 175, all applicants will be required to file an ''Exhibit A'' and provide information required by 1.2105 and 1.2112 of the Commission's rules, thus providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in 1.2112 of the Commission's rules.

### *B. Consortia And Joint Bidding Arrangements (FCC Form 175 Exhibit B)*

Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure. *See* 47 CFR 1.2105(a)(2)(viii) and 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(ix). As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same market after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an ''Exhibit B'' to the FCC Form 175.

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same market provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

### *C. New Entrant Bidding Credit (Form 175 Exhibit C)*

To fulfill its obligations under 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

1. Eligibility

The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder, in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant Bidding Credit. The bidder's attributable interests shall be determined as of the short-form (FCC Form 175) filing deadline—March 19, 2001. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline—March 19, 2001.

Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include:

- All officers and directors of a corporate bidder;
- Any owner of 5 percent or more of the voting stock of a corporate bidder;
- All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- All members of a limited liability company, unless sufficiently insulated.

In cases where a bidder's spouse or close family member holds other media

interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Bidders should note that the mass media attribution rules were recently revised.

Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999), the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, a bidder claiming new entrant status.

Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b).

2. Application Requirements

In addition to the ownership information required on Exhibit A, applicants are required to file supporting documentation on Exhibit C to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit.

3. Bidding Credits

Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and Note 2 of that section. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

Summit Media Broadcasting contends that the Commission should make allowances for small businesses to participate in auctions, such as partial payment provisions of the established minimum opening bid, or the submission of an accountant or bank report attesting to fund availability. However, as recognized by the Commission in the broadcast competitive bidding rulemaking proceeding, in the *Broadcast First Report and Order*, the *Broadcast Reconsideration Order*, and the *New Entrant Bidding Credit Reconsideration Order,* the designated entity provision adopted and specified for use in broadcast auctions—the New Entrant Bidding Credit—is particularly suitable to promote opportunity for participation in competitive bidding for construction permits in broadcast auctions.

*D. Provisions Regarding Defaulters and Former Defaulters (Form 175 Exhibit*

Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, or any of the applicant's controlling interests or their affiliates, has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any federal agency. Applicants must include this statement as Exhibit D of the FCC Form 175. If any of an applicant's controlling interests holders or their affiliates, as defined by 1.2110 of the Commission's rules, have ever been in default on any Commission license, or have ever been delinquent on any non-tax debt owed to any Federal agency, the applicant must include such information as part of the same attached statement. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

''Former defaulters''—*i.e.,* applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 37, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

*E. Other Information (FCC Form 175 Exhibits E and F)*

Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of ''designated entities'' in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

*F. Maintaining Current Information in Short-Form Applications (FCC Form 175)*

Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

## III. Pre-Auction Procedures

*A. Auction Seminar*

On March 7, 2001 the FCC will sponsor a free seminar for Auction No. 37 at the Federal Communications Commission, located at 445 12th Street, S.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the broadcast service and auction rules.

*B. Short-Form Application (FCC Form 175)—Due March 19, 2001*

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically beginning at 12:00 noon ET on March 7, 2001 and must be received at the Commission no later than 6:00 p.m. ET on March 19, 2001. Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part III.D, *infra*.

Pursuant to procedures established in the *Broadcast First Report and Order*, the Mass Media Bureau will impose a temporary freeze on the filing of FM minor modification applications during the period that FCC Form 175 applications may be filed for FM Auction No. 37. A public notice will be released in this regard.

1. Electronic Filing

Applicants must file their FCC Form 175 applications electronically. For Auction No. 37, applications may generally be filed at any time beginning at 12:00 noon ET on March 7, 2001, until 6:00 p.m. ET on March 19, 2001. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on March 19, 2001.

Applicants must press the ''Submit Form 175'' button on the ''Submit'' page of the electronic form to successfully submit their FCC Form 175. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are Monday through Friday, from 7:00 a.m. to 10:00 p.m. ET, Saturday, from 8:00 a.m. to 7:00 p.m. ET, and Sunday, from 12:00 noon to 6:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

2. Completion of the FCC Form 175

Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to the public notice provide information on the required attachments and appropriate formats.

3. Electronic Review of FCC Form 175

The FCC Form 175 electronic review software may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C of the Public Notice for details on accessing the review system.

*C. Application Processing and Minor Corrections*

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing (including FCC account numbers and the construction permits for which they applied); (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

As described more fully in the Commission's rules, after the March 19, 2001 short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections, change the certifying official, change control of the applicant, or change New Entrant Bidding Credit eligibility).

*D. Upfront Payments—Due April 16, 2001*

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on April 16, 2001.

Please note that:

- All payments must be made in U.S. dollars;
- All payments must be made by wire transfer;
- Upfront payments for Auction No. 37 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments;
- Failure to deliver the upfront payment by the April 16, 2001 deadline will result in dismissal of the application and disqualification from participation in the auction.

1. Auction Payments by Wire Transfer

Wire transfer payments must be received by 6:00 p.m. ET on April 16, 2001. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ACCOUNT# 910–1211
OBI Field: (Skip one space between each information item)
''AUCTIONPAY''
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter ''A37U'')
FCC CODE 1 (same as FCC Form 159, block 23A: ''37'')
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358435

**Note:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 37.'' Bidders should confirm the timely transmission and receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159) must be faxed to

Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the public notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 must be completed electronically and must be filed with Mellon Bank via facsimile.

3. Amount of Upfront Payment

The Bureaus have delegated authority to determine an appropriate upfront payment for the FM construction permits being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of the spectrum. Any auction applicant that has previously been in default on any Commission license or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular construction permit. *See* 47 CFR 1.2106.

4. Applicant's Wire Transfer Information for Purposes of Refunds

The Commission will use wire transfers for all Auction No. 37 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by March 19, 2001. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418–1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number
Tax ID Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.E.

*E. Auction Registration*

Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose short-form applications have been accepted for filing and that have timely submitted an upfront payment.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the short-form application.

Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Thursday, May 3, 2001, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost login codes, passwords, or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th Street, SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's short-form application, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

*F. Remote Electronic Bidding Software*

Qualified bidders are allowed to bid electronically or by telephone. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is $175.00 and must be ordered by Monday, March 19, 2001. For security purposes, the software is only mailed to the contact person at the contact address listed on the short-form application. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 37. If bidding telephonically, the telephonic bidding phone number will be supplied in the first Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, an FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175. Bidders should complete this form electronically, print it out and fax to (717) 338–2850. A manual copy of this form is also included as Attachment F of the public notice.

*G. Mock Auction*

All qualified bidders will be eligible to participate in a mock auction on Monday, May 7, 2001. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

**IV. Auction Event**

The first round of bidding for Auction No. 37 will begin on Wednesday, May 9, 2001. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

*E. Auction Structure*

1. Multiple Round, Ascending Auction

In the *Auction No. 37 Comment Public Notice*, we proposed to award the construction permits for FM Broadcast stations in a simultaneous, multiple-round, ascending auction. We received no comments on this issue. We conclude that it is operationally feasible and appropriate to auction the construction permits using this auction design. Unless otherwise announced, bids will be accepted on all construction permits in successive rounds of bidding.

2. Maximum Eligibility and Activity Rules

In the *Auction No. 37 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder.

For Auction No. 37, we will adopt the maximum eligibility proposal for Auction No. 37. The amount of the upfront payment submitted by a bidder

determines the initial maximum eligibility (in bidding units) for each bidder. Note again that the upfront payments are not attributed to specific construction permits, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not define the total dollars a bidder may bid on any given construction permit.

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction.

A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. A bidder is considered active on a construction permit in the current round if it is either the high bidder at the end of the previous round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a permanent reduction in the bidder's bidding eligibility to bring them into compliance with the activity rule.

3. Activity Rule Waivers and Reducing Eligibility

In the *Auction No. 37 Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction.

Based upon our experience in previous auctions, we adopt our proposal and each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

4. Auction Stopping Rules

For Auction No. 37, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all construction permits until bidding stops on every construction permit. The auction will close for all construction permits when one round passes during which no bidder submits a new acceptable bid on any construction permit, a withdrawal, or applies a proactive waiver. After the first such round, bidding closes simultaneously on all construction permits.

The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on a construction permit when it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for construction permits.

We adopt all of the above proposals concerning the auction stopping rules. Auction No. 37 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule.

5. Auction Delay, Suspension, or Cancellation

In the *Auction No. 37 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or

cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in their sole discretion, may elect to: Resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

*B. Bidding Procedures*

1. Round Structure

The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. This public notice will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round result formats and locations will also be included in the public notice.

The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

2. Reserve Price or Minimum Opening Bid

The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. In conformity with this mandate, the Commission has directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

In the *Auction No. 37 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 37. The minimum opening bid was determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data, and recent broadcast transactions.

Several commenters asserted that the minimum opening bids and/or upfront payments identified in Attachment A of the *Auction No. 37 Additional Comment Public Notice* are excessive and seek reductions thereof. In general, most commenters claim that the minimum opening bids, as well as the upfront payments, may not accurately reflect the value of the proposed FM construction permits, as determined by class of facility, market size and anticipated population coverage, and that many of the proposals are not consistent with the minimum opening bids and upfront payments for similar facilities auctioned in Auction No. 25.

After careful consideration of the concerns raised by commenters, we have adjusted the minimum opening bids and upfront payments to reduce the possibility of unsold construction permits and the likelihood that excessive minimum opening bid and upfront payment amounts could discourage auction participation. We believe the modified minimum opening bids and upfront payments remain sufficient to deter insincere bidding. The revised minimum opening bids and upfront payment amounts are reflected on Attachment A to the Public Notice.

3. Bid Increments and Minimum Accepted Bids

In the *Auction No. 37 Comment Public Notice*, we proposed to apply a minimum bid increment of 10 percent. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate.

We adopt the proposal contained in the *Auction No. 37 Comment Public Notice.* Once there is a standing high bid on the construction permit, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that permit can be raised. For Auction No. 37, we will use a flat, across-the-board increment of 10 percent to calculate the minimum bid increment. The Bureaus retain the discretion to compute the minimum bid increment through other methodologies if it determines circumstances so dictate. Advanced notice of the Bureau's decision to do so will be announced via the Automated Auction System.

4. High Bids

Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie high bids (identical gross bid amounts) for a construction permit during a round, the earliest of the tied bids will be the standing high bid at the end of the round. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date- and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

5. Bidding

During a bidding round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 37.

A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) The construction permits applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those construction permits for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of construction permits.

The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations after they submit their bids.

The bid entry screen of the automated auction system software for Auction No. 37 allows bidders to place multiple increment bids. Specifically, high bids may be increased from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a construction permit. The bidding software will display the bid increment for each construction permit.

To place a bid on a construction permit, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter ''1'' in the bid increment multiplier column and press submit.

For any construction permit on which the FCC is designated as the high bidder (*i.e.*, a construction permit that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the construction permit, and bidders should enter ''1'' in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

6. Bid Removal and Bid Withdrawal

In the *Auction No. 37 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder's discretion.

In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, we conclude that, for Auction No. 37, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or ''gaming'' in this auction.

The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on construction permits. If a high bid is withdrawn, the construction permit will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a ''place holder'' on the construction permit until a new acceptable bid is submitted on that construction permit.

*Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure will enhance bidder flexibility during the auction. Therefore, we will adopt these procedures for Auction No. 37.

Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the ''withdraw bid'' function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

*Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single construction permit, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidder to most efficiently allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single construction permit for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

In the *Part 1 Fifth Report and Order,* 65 FR 52323 (August 29, 2000), the Commission modified 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a construction permit that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the bid withdrawals. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed at the close of the subsequent auction of the

construction permit. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

7. Round Results

Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and FCC account numbers for Auction No. 37 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

8. Auction Announcements

The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

9. Maintaining the Accuracy of Short-Form (FCC Form 175) Information

As noted in Part II.A., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4–A668, Washington, D.C. 20554

A separate copy of the letter should be mailed to Kenneth Burnley, Auctions and Industry Analysis Division, 4–B524, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Questions about other changes should be directed to Kenneth Burnley at (202) 418–0660.

**V. Post-Auction Procedures**

*A. Down Payments*

After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each construction permit, and listing bid withdrawal payments due.

Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the United States Government to 20 percent of its net winning bid (actual bids less any applicable bidding credit). *See* 47 CFR 1.2107(b) and 73.5003. In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' Part IV.B.6. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

*B. Long-Form Application*

Within thirty days following the release of the FM auction closing public notice, winning bidders must submit a properly completed Form 301, Application for FM Construction Permit, and required exhibits, for each construction permit won through Auction No. 37. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. *See* 47 CFR 1.2112(b) and 73.5005. Further filing instructions will be provided to auction winners at the close of the auction.

*C. Auction Discount Voucher*

On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher in the amount of $125,273,878.00. This Auction Discount Voucher may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order.

*D. Default and Disqualification*

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant. *See* 47 C.F.R. § 1.2109(d).

*E. Refund of Remaining Upfront Payment Balance*

All applicants that submitted upfront payments but were not the winning bidder for a construction permit in Auction No. 37 may be entitled to a refund of their upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (''TIN''). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, S.W., Room 1–A824, Washington, D.C. 20554

Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information. **Note:** Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

**Lisa Scanlan,**

*Supervisory Attorney, Audio Services Division, Mass Media Bureau.*

[FR Doc. 01–2949 Filed 2–2–01; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–01–31–A (Auction No. 31); DA 01–266]**

### Auction of Licenses for the 747–762 and 777–792 MHz Bands Postponed Until September 12, 2001

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the postponement of the upcoming auction of licenses in the 747–762 and 777–792 MHz band (Auction No. 31), originally scheduled to begin on March 6, 2001, the new date is September 12, 2001. The Wireless Telecommunications Bureau (Bureau) believes that a brief delay is warranted to provide additional time for bidder preparation and planning.

**DATES:** Auction No. 31 is rescheduled to begin on September 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Howard Davenport or Bill Huber, Auctions Legal Branch at (202) 418–0660, or Kathy Garland, Auctions Operations at (717) 338–2801.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released January 31, 2001 (*Auction No. 31 Postponement Public Notice*). The complete text of the *Auction No. 31 Postponement Public Notice*, including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased form the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 445 12th Street, SW., Room CY–B400, Washington, DC 20554, (202) 314–3070. The *Auction No. 31 Postponement Public Notice* is also available on the Internet at the Commission's web site: *http://www.fcc.gov/wtb/documents.html.*

1. On January 18, 2001, Verizon Wireless (''Verizon'') submitted a letter to the Bureau requesting a postponement of Auction No. 31. Later that day, the Bureau released a *Public Notice* seeking comment on Verizon's request. The Bureau received 13 timely-filed comments in response to that *Public Notice.* A majority of commenters support a postponement of this auction, while others oppose any delay. Under the current circumstances, the Bureau believes that a brief delay is warranted to provide additional time for bidder preparation and planning and for reasons of auction administration, consistent with the Commission's obligations under section 309(j)(3)(E) of the Communications Act of 1934, as amended.

2. The short-form (FCC Form 175) application filing window for Auction No. 31 is now closed. Any applications that were in the system are deemed ineffective and will be purged from the system. The new schedule is as follows:

- *Filing Deadline for FCC Form 175:* August 17, 2001; 6:00 PM ET.
- *Auction Start Date:* September 12, 2001.

The Bureau will announce other pre-auction deadlines in a subsequent public notice.

Federal Communications Commission.

**Margaret Wiener,**

*Deputy Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau.*

[FR Doc. 01–3040 Filed 2–2–01; 11:17 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 01–188]**

### Process To Update the International Bureau's Records for Carriers That Provide International Telecommunications Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the start of a 90-day process to update the International Bureau's records for carriers that provide international telecommunications services and operators of international telecommunications facilities. This action will ensure that carriers have obtained the necessary authorizations to provide international telecommunications services.

**DATES:** The 90-day period commences on May 7, 2001.

**ADDRESSES:** Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Arbogast, International Bureau, (202) 418–1460.

**SUPPLEMENTARY INFORMATION:** Released January 30, 2001.

1. The International Bureau has received a number of requests for *nunc pro tunc* approval of belatedly filed applications for authority to provide international telecommunications services under Section 214 of the Communications Act of 1934, as amended. The International Bureau also has received requests for nunc pro tunc approval of other belatedly filed applications; specifically, requests for authority to assign or transfer control of existing international Section 214 authorizations, and to assign or transfer control of common carrier and non-common carrier submarine cable landing licenses. These requests suggest that there may be some carriers providing international telecommunications services, or operators operating international telecommunications facilities, without proper authority.

2. In light of this, and particularly in light of the fact that the Commission has streamlined its rules as competition in international markets has developed, the International Bureau is taking steps to ensure that international carriers and operators are in compliance with the rules and that its records regarding authorized carriers and operators are current and accurate. Timely filed applications and accurate records will serve the public interest and protect consumers by ensuring that the Commission has the information necessary to enforce its rules, regulations and policies governing carriers and operators that provide U.S. international service. Accordingly, the International Bureau is announcing the commencement of a 90-day period during which carriers are encouraged to apply for necessary authorizations. The International Bureau does not expect to initiate enforcement action against these carriers and operators during this 90-day period. At the end of the 90-day period, the International Bureau will refer cases of noncompliance to the Enforcement Bureau for appropriate enforcement action.

#### Authorization and Licensing Requirements

3. The Commission's authorization and licensing requirements for carriers providing international telecommunications services and operators of international telecommunications facilities include the following:

*Section 214 Authorizations:* Common carriers seeking to provide international telecommunications services or to construct, acquire, or operate international telecommunications facilities must seek from the Commission an authorization pursuant to Section 214 of the Communications Act. In addition, § 63.18 of the Commission's rules provides, in pertinent part, that:

> Except as otherwise provided in this part, any party seeking authority pursuant to Section 214 of the Communications Act of

1934, as amended, to construct a new line, or acquire or operate any line, or engage in transmission over or by means of such additional line for the provision of common carrier telecommunications services between the United States, its territories or possessions, and a foreign point shall request such authority by formal application which shall be accompanied by a statement showing how the grant of the application will serve the public interest, convenience, and necessity. (47 CFR 63.18)

The filing requirements of § 63.18 apply to any entity that seeks to initiate the provision of international telecommunications services either in its own name or through one or more wholly-owned direct or indirect subsidiaries. (§ 63.21(i) of the rules permits an authorized carrier to provide service through one or more wholly-owned subsidiaries, provided the authorized carrier notifies the Commission within 30 days after the subsidiary initiates service. The notification must contain the information required by § 63.21(i). 47 CFR 63.21(i).) Alternatively, the subsidiary may apply for its own Section 214 authorization prior to initiating service. Pursuant to § 20.15(d) of the Commission's rules, the requirement to obtain prior authorization to provide international services applies to carriers providing commercial mobile radio services (''CMRS''). CMRS carriers are exempt, however, from certain tariffing requirements with respect to the provision of international services. *See* 47 CFR 20.15(d).

4. Section 63.18 also applies to assignments and transfers of control of existing international Section 214 authorizations unless the assignment or transfer is a *pro forma* transaction covered by the provisions of § 63.24. A *pro forma* assignment or transfer is one that does not involve a substantial change in ownership or control. In such a case, § 63.24 of the Commission's rules provides, in pertinent part, that '' [a] *pro forma* assignee must notify the [C]ommission no later than 30 days after the assignment is consummated.'' (*See* 47 CFR 63.24. This section also provides a detailed definition of which kinds of transactions constitute a *pro forma* transfer or assignment.)

5. *Submarine Cable Licenses:* Carriers seeking to own or operate submarine cable facilities must file applications to obtain submarine cable landing licenses, including transfers of control or assignments of such licenses, or modifications of such licenses to add new licensees. Applications must be filed pursuant to the Submarine Cable Landing License Act, Executive Order No. 10530, and § 1.767 of the Commission's Rules.

**Process To Update International Bureau Records**

6. The International Bureau believes it is necessary for carriers to timely file for and receive proper authorizations and licenses and to be otherwise in compliance with all applicable rules and policies. To that end, the International Bureau announces a 90-day period after which, pursuant to its authority under §§ 0.111 and 0.311 of the Commission's rules, it will refer to the Enforcement Bureau for appropriate enforcement action any carrier that is providing international telecommunications services or operator operating international telecommunications facilities without first receiving proper authorizations from the Commission under Section 214 of the Communications Act and Sections 34 through 39 of the Submarine Cable Landing License Act, respectively. The Enforcement Bureau will take into account voluntary disclosure of misconduct in determining an appropriate sanction. The 90-day period will commence on May 7, 2001.

7. In addition, the Telecommunications Division of the International Bureau also takes this opportunity to advise carriers and operators that, commencing with the date of publication of this public notice in the **Federal Register**, it will be extremely reluctant to grant requests for nunc pro tunc approval of belatedly filed applications. Such requests will be considered only in extraordinary circumstances. (*Cf. Biennial Regulatory Review—Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services,* Memorandum Opinion and Order on Reconsideration, WT Docket No. 98–20, 14 FCC Rcd 11476, 11485 ¶¶ 20–22 (1999).)

8. For further information about the processing of applications under this program, contact Rebecca Arbogast, Chief, Telecommunications Division, International Bureau, at 202–418–1460 or Belinda Nixon, Telecommunications Division, International Bureau, at 202–418–1382 or e-mail at bnixon@fcc.gov.

Federal Communications Commission.

**Rebecca Arbogasst,**

*Chief, Telecommunications Division, International Bureau.*

[FR Doc. 01–2947 Filed 2–2–01; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 92–237; DA 01–242]**

## Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On January 31, 2001, the Commission released a public notice announcing the February 20 and 21, 2001, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Callahan, Designated Federal Officer (DFO) at (202) 418–2320 or cchallaha@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW., Suite 6A207, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** Released: January 31, 2001.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, February 20, 2001, from 8:30 a.m. until 5 p.m., and on Wednesday, February 21, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC.

**SUPPLEMENTARY INFORMATION:** This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Cheryl Callahan at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

**Proposed Agenda**

1. Approval of January 16–17, 2001, meeting minutes.

2. North American Numbering Plan Administrator (NANPA) Report

3. Report of NANPA Oversight Working Group
—Proposed Process to Resolve PIPs
—Status of NANPA Requirements Document
—Status of NANPA Performance Review
4. Report of Numbering Resource Optimization (NRO) Working Group
—Final NRUF Requirements
—Continuing Review of NANP-Exhaust
—Monitoring of State Pooling Trials
5. Industry Numbering Committee Report
6. Report of Toll Free Access Codes IMG
7. Report of the Local Number Portability Administration (LNPA) Working Group
Wireless Number Portability Subcommittee
8. Report of Cost Recovery Working Group
Status of NBANC B&C Technical Requirements
9. Report from NBANC
10. Reseller CIC IMG status report
11. Oversight of LLCs NPAC
12. Meeting Procedures IMG
13. Action Items
14. Steering Group Meeting
—Table of NANC Projects
—Change September 18–19 Meeting to September 11–12
15. The Big Picture Discussion
16. Public Participation (5 minutes each, if any)
17. Other Business

Federal Communications Commission.

**Diane Griffin Harmon,**

*Deputy Chief, Network Services Division, Common Carrier Bureau.*

[FR Doc. 01–2948 Filed 2–2–01; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 2:00 p.m., Thursday, February 8, 2001.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 1, 2001.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 01–3052 Filed 2–1–01; 11:40 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HCFA–3061–N]**

### Medicare Program; Meetings of the Medical Devices and Prosthetics Panel and the Executive Committee of the Medicare Coverage Advisory Committee; February 21 and 22, 2001

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meetings.

**SUMMARY:** This notice announces public meetings of the Medical Devices and Prosthetics Panel (the Panel) and the Executive Committee (EC) of the Medicare Coverage Advisory Committee (MCAC). The Panel and the EC will provide advice and recommendations to HCFA about clinical issues.

On Wednesday, February 21, 2001, the Panel will hear and discuss presentations from interested persons regarding ambulatory blood pressure monitoring for the diagnosis and treatment of hypertension. On Thursday, February 22, 2001, the meeting of the EC will be to discuss comments received on the March 1, 2000, interim recommendations for evaluating effectiveness of the MCAC process. It will also ratify or comment on the recommendations of the Medical and Surgical Procedures Panel meeting that took place on October 17 and 18, 2000 regarding both electrostimulation for the treatment of chronic wounds and sacral nerve stimulation for the treatment of incontinence.

Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

**DATES:** *The Meetings:* The meetings will be held on Wednesday, February 21, and Thursday, February 22, 2001, respectively, from 8 a.m. until 4 p.m., E.S.T.

*Deadline for Presentation Notification and Comments:* February 14, 2001, 5 p.m., E.S.T.

*Special Accommodations:* Persons attending the meetings who are hearing- or visually-impaired, and/or have a condition that requires special assistance/accommodations, are asked to notify the respective Executive Secretaries by February 14, 2001.

**ADDRESSES:** *The Meetings:* The meetings will be held at the Baltimore Convention Center, Rooms 327 and 328 (for both days), One West Pratt Street, Baltimore, MD 21201.

*Presentations and Comments:* Submit formal presentations and written comments for the Panel's discussion on ambulatory blood pressure monitoring for the diagnosis and treatment of hypertension to Patricia M. Brocato-Simons, Executive Secretary, Office of Clinical Standards and Quality, Health Care Financing Administration, 7500 Security Boulevard, Mail Stop S3–02–01, Baltimore, MD 21244–1850.

Submit formal presentations and written comments for the EC's discussions on interim recommendations for evaluating effectiveness of the MCAC process, or on electrostimulation for the treatment of chronic wounds and sacral nerve stimulation for the treatment of incontinence to Constance A. Conrad, Executive Secretary, Office of Clinical Standards and Quality, Health Care Financing Administration, 7500 Security Boulevard, Mail Stop S3–02–01, Baltimore, MD 21244–1850.

*Website:* You may access up-to-date information on this meeting at www.hcfa.gov/quality/8b.htm.

*Hotline:* You may access up-to-date information on this meeting on the HCFA Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area (410) 786–9379.

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Brocato-Simons, Executive Secretary for the Panel, at 410–786–0261, or Constance A. Conrad, Executive Secretary for the EC, at 410–786–4631.

**SUPPLEMENTARY INFORMATION:** On August 13, 1999, we published a notice (64 FR 44231) to describe the Medicare Coverage Advisory Committee (MCAC), which provides advice and recommendations to us about clinical issues. This notice announces the

following public meetings of the Medical Devices and Prosthetics Panel (the Panel) and the Executive Committee (EC) of the MCAC:

**The Medical Devices and Prosthetics Panel and Invited Guests**

Harold Sox, Jr., M.D.; Ronald Davis, M.D.; Willarda Edwards, M.D.; John Hinton, D.O., M.P.H.; Anne Roberts, M.D.; Karl Matuszewski, M.S., PharmD; Thomas Strax, M.D.; Wade Aubry, M.D.; Rory Cooper, Ph.D.; and Eileen Helzner, M.D. In addition, two invitees will attend the Panel meeting and lend their respective expertise to the deliberations: Kenneth Brin, M.D., M.P.H, a current member of the Medical and Surgical Procedures Panel, with a specialty in the field of cardiology, will serve as a temporary, voting member of the Panel; and Parker Staples, M.D., the Carrier Medical Director for the State of Rhode Island, will serve as a temporary, non-voting guest of the Panel.

**Topic of the Meeting**

On Wednesday, February 21, 2001, the Panel will hear and discuss presentations from interested persons regarding ambulatory blood pressure monitoring for the diagnosis and treatment of hypertension.

**The EC Members:**

Alan M. Garber, M.D.; Michael D. Maves, M.D.; Daisy Alford-Smith, M.D.; Joe Johnson, D.C.; Harold Sox, M.D.; Ronald Davis, M.D.; Frank Papatheofanis, M.D., Ph.D.; John Ferguson, M.D.; Robert Murray, J.D., Ph.D.; Thomas Holohan, M.D., M.B.A.; Leslie Francis, Ph.D., J.D.; Robert Brook, M.D., Linda Bergthold; and Randel Richner, M.P.H.

**Topic of the Meeting**

On Thursday, February 22, 2001, the EC will hear and discuss presentations from interested persons regarding comments received on interim recommendations for evaluating effectiveness of the MCAC process. The guidelines were developed on March 1, 2000, for the purpose of providing guidance to the specialty panels. It will also ratify or comment on recommendations regarding electrostimulation for the treatment of chronic wounds and sacral nerve stimulation, discussed by the Medical and Surgical Procedures Panel on October 17 and 18, 2000.

**Procedure and Agenda**

The meetings are open to the public. Oral presentations will be heard from the public for approximately 2.5 hours each meeting day. However, the number and duration of each oral presentation may be limited in recognition of the time available. If you wish to make formal presentations, you must notify the respective Executive Secretaries listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, and submit the following by the Deadline for Presentations and Comments date listed in the **DATES** section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and an estimate of the time required to make the presentation. A written copy of your presentation will be provided to each Panel or EC member prior to offering your public comments. We will request that you declare at the meetings whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their respective competitors).

After HCFA presentations, the public will be asked to make its presentations to the Panel (February 21) or the EC (February 22). After public presentations, the Panel or the EC will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel or the EC will not hear further comments during this time except at the request of the chairpersons. Each day, there will be approximately a 30-minute open public session for any attendee to address issues specific to the topic. At the conclusion of each day, the respective members will vote, and the Panel or the EC will make its recommendations.

**Authority:** 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 26, 2001.

**Jeffrey L. Kang,**

*Director, Office of Clinical Standards and Quality, Health Care, Financing Administration*

[FR Doc. 01–2941 Filed 2–2–01; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is also available on the internet at the following website: *http://www.health.org/workplace*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

**Special Note:** Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

**SUPPLEMENTARY INFORMATION:** Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115 (Formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 1301 18th Ave NW, Suite 110, Austin, MN 55912, 507–437–7322

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232 (Formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 4022 Willow Lake Blvd., Memphis, TN 38118, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361 (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (Formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 858–279–2600/800–882–7272

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120/800–444–0106 (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 801 East Dixie Ave., Suite 105A, Leesburg, FL 34748, 352–787–9006x4343 (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd, San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)

San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995/858–677–7970
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–339–4299 (Formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851

The following laboratory has voluntarily withdrawn from the NLCP, effective December 29, 2000: Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 01–2935 Filed 2–2–01; 8:45 am]

**BILLING CODE 4160–20–U**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**(CO–130–01–5320–ES–241A; COC–36803, COC–63662)**

## Realty Action; Recreation and Public Purposes (R&PP) Act Classification and Federal Land Policy and Management Act Mineral Conveyance; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In response to an application from Eagle County, Colorado, the following public lands have been examined and found suitable for classification for conveyance to Eagle County, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands currently leased to Eagle County for landfill purposes (R&PP lease COC–36803) would continue to be used for landfill purposes. Additional adjacent land would also be used for landfill purposes. Eagle County has also submitted an application to purchase the mineral estate.

**Sixth Principal Meridian, Colorado**

*Township 4 South, Range 83 West*

Section 2: E½SW¼SW¼, SW¼SW¼SW¼, SE¼SW¼, S½SE¼
Section 10: E½NE¼, E½SW¼NE¼, E½SE¼SW¼, SE¼
Section 11: N½N½, SW¼NW¼, W½SE¼NW¼, W½E½SE¼NW¼, W½W½SW¼, W½E½W½SW¼, E½NE¼NW¼SW¼, W½NW¼NE¼SW¼

Aggregating 730 acres, more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current Bureau land-use planning and would be in the public interest. The patent or patents, if issued, will be subject to the following reservations, terms, and conditions:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (substance as defined in 40 CFR part 302.)

3. A right-of-way thereon for ditches and canals constructed by authority of the United States.

4. Those rights for electric transmission line purposes granted by rights-of-way COC–31358 and COC–36762.

5. Those rights for telephone line purposes granted by rights-of-way COC–35138 and COC–50820.

6. Those rights for road purposes granted by rights-of-way COC–40272 and COC–57551.

7. Eagle County, its successors or assigns, shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from: Sixth Principal Meridian, Colorado, Sec.2: E½SW¼SW¼, SW¼SW¼SW¼, SE¼SW¼, S½SE¼; Sec. 10: E½NE¼, E½SW¼NE¼, E½SE¼SW¼, SE¼; Sec. 11: N½N½, SW¼NW¼, W½SE¼NW¼, W½E½SE¼NW¼, W½W½SW¼, W½E½W½SW¼, E½NE¼NW¼SW¼, W½NW¼NE¼SW¼, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States. In the event of payment, loss, or expense under this agreement, the patentee shall be subrogated to the extent of the amount of such payment to all rights, powers, privileges, and remedies of the United States against any person regarding such payment, loss, or expense.

The following lands included in the proposed sale are encumbered by an unperfected right-of-way application for reservoir purposes (COC–17784), held by the Denver Board of Water Commissioners: Section 2 (SW¼SW¼SW¼, NE¼SW¼SW¼), Section 10 (NW¼SE¼, SW¼NE¼.)

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for a landfill. Comments on the classification are restricted to whether the land is

physically suited for a landfill, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a landfill.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right of appeal to the Interior Board of Land Appeals.

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the application, or two years from the date of this notice, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested persons may submit comments regarding the proposed classification or conveyance of the lands to: Bureau of Land Management, Western Slope Center, 2815 H Road, Grand Junction, Colorado, 81506, ATTN: Alan Kraus. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

*For Further Information:* Detailed information concerning this action is available at the Bureau of Land Management, Glenwood Springs Field Office, 50629 Highway 6 and 24, Glenwood Springs, Colorado, or the Bureau of Land Management, Western Slope Center/Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado, or contact Mr. Alan Kraus at (970)244–3078.

*Public Meeting:* A public open house will be held on February 15, 2001 from 6:00pm to 9:00pm, at the Garden Level Classroom, Eagle County Building, 500 Broadway, Eagle, Colorado. The purpose of the open house will be to allow interested persons to view information regarding the proposed sale and the proposed landfill expansion, and to discuss the proposals with Bureau of Land Management and Eagle County personnel. Persons wishing to submit formal comments may do so at that time.

Dated: January 23, 2001.

**Anne Huebner,**

*Glenwood Springs Field Office Manager.*

[FR Doc. 01–2905 Filed 2–2–01; 8:45 am]

BILLING CODE 4310–JB–U

---

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–010–1430–ET; FL–ES–033516]**

### Notice of Proposed Withdrawal and Opportunity for Public Meeting; Florida

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Fish and Wildlife Services proposes to withdraw 1.13 acres of public lands as an addition to the National Key Deer Refuge. This notice closes the lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing.

**DATES:** Comments and requests for a public meeting must be received by May 7, 2001.

**ADDRESSES:** Comments and meeting requests should be sent to the Field Manager, BLM, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

**FOR FURTHER INFORMATION CONTACT:** Mary Weaver, Jackson Field Office, 601–977–5400.

**SUPPLEMENTARY INFORMATION:** On January 17, 2001, a petition was approved allowing the United States Fish and Wildlife Service to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

**Tallahassee Meridian**

T. 66 S., R. 32 E.,
Sec. 10, lot 6.
T. 67 S., R. 27 E.,
Sec. 14, lot 38.

The areas described aggregate 1.13 acres in Monroe County.

The purpose of the proposed withdrawal is to protect the National Key Deer Refuge.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Jackson Field Office of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Jackson Field Office within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the schedule date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are leases or permits.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the United States Fish and Wildlife Service.

**Bruce Dawson,**

*Field Manager.*

[FR Doc. 01–2904 Filed 2–2–01; 8:45 am]

BILLING CODE 4310–6J–M

---

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Announcement of Posting of Invitation for Bids on Crude Oil From Federal Leases and State of Wyoming Properties in Wyoming

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of invitation for bids on Federal and State of Wyoming crude oil in the State of Wyoming.

**SUMMARY:** The Minerals Management Service (MMS), in cooperation with the State of Wyoming (State), will post on MMS's Internet Home Page and make available in hard copy a public competitive offering of approximately 5,100 barrels per day (bpd) of crude oil, to be taken as royalty-in-kind (RIK) from a combination of Federal and State properties in Wyoming's Bighorn and Powder River Basins through an

Invitation For Bids (IFB), Number 1435–02–01–RP–40342.

**DATES:** The IFB will be posted on MMS's Internet Home Page on or about January 30, 2001. Bids will be due for both MMS and the State at the posted receipt location on or about February 15, 2001. MMS and the State will notify successful bidders on or about February 20, 2001. The Federal Government and the State will begin actual taking of awarded royalty oil volumes for delivery to successful bidders for a 6-month period beginning April 1, 2001.

**ADDRESSES:** The IFB will be posted on MMS's Home page at *http://www.mrm.mms.gov* under the navigation button ''Royalty In Kind''. The IFB may also be obtained by contacting Mr. Todd Leneau at the address in the **FOR FURTHER INFORMATION CONTACT** section below. Bids should be submitted to the address provided in the IFB.

**FOR FURTHER INFORMATION CONTACT:** For additional information concerning the IFB document, terms, and process for Federal leases, contact Mr. Todd Leneau, Minerals Management Service, MS 2730, P.O. Box 25165, Denver, CO 80225–0165; telephone number (303) 275–7385; fax (303) 275–7303; e-mail Todd.Leneau@mms.gov. For additional information concerning the IFB document, terms, and process for State of Wyoming properties, contact Mr. Harold Kemp, Office of State Lands and Investments, Herschler Building, 3rd Floor West, 122 West 25th Street, Cheyenne, WY 82002–0600; telephone number (307) 777–6643; fax: (307) 777–5400; Email: *hkemp@missc.state.wy.us.*

**SUPPLEMENTARY INFORMATION:** The offering in this IFB continues the ongoing RIK program in Wyoming. The State and MMS believe that taking oil royalties as a share of production, or RIK, from the properties offered in the IFB is a viable alternative to the agencies' usual practice of collecting oil royalties as a share of the value received by the lessee for sale of the production. Both agencies will continue to monitor the effectiveness of the RIK approach to taking crude oil royalties in Wyoming.

In the current sale under IFB No. 1435–02–00–RP–40329, the number of properties offered was a three-fold increase over properties offered in the prior sale. The new sale involves approximately 5,100 bpd of crude oil from 60 Federal and State properties located in Wyoming's Bighorn and Powder River Basins. The 60 properties in the new sale represent approximately 20 percent of the properties in the current sale. However, the volume represents approximately 90 percent of the crude oil currently being delivered to purchasers under the current sale for production months October 2000 through March 2001. The production is pipeline-connected.

The properties will be identified in the IFB by specific pipeline subgroups of Wyoming sweet crude oil, Wyoming general sour crude oil, or Wyoming asphaltic sour crude oil. Purchasers must bid on a property basis. Bids will be due as specified in the IFB on or about February 15, 2001, and successful bidders will be notified on or about February 20, 2001. Successful bidders will be required to obtain Letters of Credit, unless they can self certify to the requirements in the IFB. Details will be available in the IFB.

The following are some of the additional details regarding the offerings that will be posted in the IFB on or about January 30, 2001:

- List of specific properties;
- For each property—tract allocations, royalty rate(s), estimated average daily royalty volume, quality, current transporter, and operator;
- Bid basis;
- Reporting requirements;
- Terms and conditions; and
- Contract format.

The internet posting and availability of the IFB in hard copy are being announced in oil and gas trade journals as well as in this **Federal Register** notice.

Dated: January 26, 2001.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. 01–2978 Filed 2–2–01; 8:45 am]

**BILLING CODE 4310–MR–W**

---

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

**RIN 1010–AB57**

### Major Portion Prices and Due Dates for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of major portion prices.

**SUMMARY:** Final regulations for valuing gas produced from Indian leases, published on August 10, 1999, require MMS to determine major portion values and notify industry by publishing the values in the **Federal Register**. The regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion value. This notice provides the major portion values and due dates for July and August 2000 production months.

**EFFECTIVE DATES:** January 1, 2000.

**ADDRESSES:** See **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFROMATION CONTACT:** John Barder, Indian Oil and Gas Compliance Asset Management, MMS; telephone, (303) 275–7234; FAX, (303) 275–7470; E-mail, John.Barder@mms.gov; mailing address, Minerals Management Service, Minerals Revenue Management Indian Oil and Gas Compliance Asset Management, P.O. Box 25165, MS 396G3, Denver, Colorado 80225–0165.

**SUPPLEMENTARY INFORMATION:** On August 10, 1999, MMS published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation).

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000 along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii)(64 FR 43520, August 10, 1999). If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest under 30 CFR 218.54 (1999) will accrue from the due date until payment is made and an amended Form MMS–2014 is received. The table below lists the major portion prices for all designated areas not associated with an Index Zone and the due date for payment of additional royalties.

GAS MAJOR PORTION PRICES AND DUE DATES FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

| MMS-designated areas | July 2000 | August 2000 | Due date |
|---|---|---|---|
| Alabama—Coushatta | $4.51/MMBtu | $4.04/MMBtu | 02/28/2001 |
| Blackfeet Reservation | 3.23/MMBtu | 2.82/MMBtu | 02/28/2001 |

GAS MAJOR PORTION PRICES AND DUE DATES FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE—Continued

| MMS-designated areas | July 2000 | August 2000 | Due date |
|---|---|---|---|
| Fort Belknap | 4.27/MMBtu | 4.13/MMBtu | 02/28/2001 |
| Fort Berthold | 2.15/MMBtu | 1.70/MMBtu | 02/28/2001 |
| Fort Peck Reservation | 2.69/MMBtu | 2.31/MMBtu | 02/28/2001 |
| Navajo Allotted Leases in the Navajo Reservation | 3.80/MMBtu | 3.42/MMBtu | 02/28/2001 |
| Rocky Boys Reservation | 3.02/MMBtu | 2.56/MMBtu | 02/28/2001 |
| Turtle Mountain Reservation | 1.18/MMBtu | 1.18/MMBtu | 02/28/2001 |
| Ute Allotted Leases in the Uintah and Ouray Reservation | 3.86/MMBtu | 3.15/MMBtu | 02/28/2001 |
| Ute Tribal Leases in the Uintah and Ouray Reservation | 3.86/MMBtu | 3.15/MMBtu | 02/28/2001 |

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999.

Dated: January 24, 2001.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. 01–2979 Filed 2–2–01; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement and to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

DATES AND LOCATION: The Adaptive Management Work Group will conduct the following public meetings:

*Phoenix, Arizona—April 12–13, 2001.* The meeting will begin at 9:30 a.m. and conclude at 4 p.m. on the first day and begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

*Agenda:* The purpose of the meeting will be to discuss the following: development of the AMP Strategic Plan, basin hydrology, results from the TCD Expert Panel Workshop, environmental compliance, and other administrative and resource issues pertaining to the AMP.

*Phoenix, Arizona—July 17–18, 2001.* The meeting will begin at 9:30 a.m. and conclude at 4 p.m. on the first day and begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

*Agenda:* The purpose of the meeting will be to discuss the following: the AMP Strategic Plan, FY 2003 AMP budget, environmental compliance, and other administrative and resource issues pertaining to the AMP.

DATES AND LOCATION: The Technical Work Group will conduct the following public meetings:

*Phoenix, Arizona—February 13, 2001.* The meeting will begin at 9:30 a.m. and conclude at 5 p.m. the first day and begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be at the Crowne Plaza Hotel, 100 N. First Street, Phoenix, Arizona, Navajo B&C conference rooms.

*Agenda:* The purpose of the meeting will be to continue work on the Strategic Plan and to identify major issues for the AMWG to address in April and July, including an update on hydrology, TWG ad hoc groups, Protocol Evaluation Panel Report on the Integrated Water Quality Plan, draft reports on the TCD Expert Panel Workshop and Stock Assessment Workshop, and a tour of the Western Area Power Southwest Office.

*Phoenix, Arizona—March 14–15, 2001.* The meeting will begin at 9:30 a.m. and conclude at 4 p.m. The meeting will be held at the Hawthorne Suites Hotel, I–10 and University Drive, Phoenix, Arizona.

*Agenda:* The purpose of the meeting will be to discuss the following: Strategic Plan management objectives, Low Steady Summer Flows Report, TWG River Trip on March 24–31, and other administrative and resource issues pertaining to the AMP.

*Phoenix, Arizona—May 30–31, 2001.* The meeting will begin at 9:30 a.m. and conclude at 4 p.m. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

*Agenda:* The purpose of the meeting will be to discuss the following: Final results of the Low Steady Summer Flows, discussion of Strategic Plan Ad Hoc Committee work, agenda items for the AMWG meeting to be held July 17–18, 2001, and other administrative and resource issues pertaining to the AMP.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found on the Bureau of Reclamation's website under Environmental Programs at: *http://www.uc.usbr.gov.* Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

To allow full consideration of information by the TWG and AMWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: *rpeterson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the TWG and AMWG members at the meetings.

**FOR FURTHER INFORMATION CONTACT:** Randall Peterson, telephone (801) 524–

3758; faxogram (801) 524–3858; *rpeterson@uc.usbr.gov.*

Dated: January 31, 2001.

**Larry L. Todd,**

*Director, Operations, (Exercising the Commissioner's authority).*

[FR Doc. 01–2975 Filed 2–2–01; 8:45 am]

BILLING CODE 4310–MN–P

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–671–673 (Review)]**

## Silicomanganese From Brazil, China, and Ukraine

### Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on silicomanganese from Brazil and China and termination of the suspended investigation on silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### Background

The Commission instituted these reviews on November 2, 1999 (64 FR 59209), and determined on February 3, 2000, that it would conduct full reviews (64 FR 7891, February 16, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 14, 2000 (64 F.R. 49595). The hearing was held in Washington, DC, on November 14, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on January 25, 2001. The views of the Commission are contained in USITC Publication 3386 (January 2001), entitled Silicomanganese from Brazil, China, and Ukraine: Investigations Nos. 731-TA–671–673 (Review).

Issued: January 31, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–2966 Filed 2–2–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Neither former Commissioner Thelma J. Askey nor Commissioner Dennis M. Devaney participated.

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–470–472 (Review)]**

## Silicon Metal From Argentina, Brazil, and China

### Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on silicon metal from Argentina would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] The Commission further determines that revocation of the antidumping duty orders on silicon metal from Brazil and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

### Background

The Commission instituted these reviews on November 2, 1999 (64 FR 59209) and determined on February 3, 2000 that it would conduct full reviews (65 FR 7891, February 16, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 14, 2000 (65 FR 49595). The hearing was held in Washington, DC, on November 14, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on January 25, 2001. The views of the Commission are contained in USITC Publication 3385 (January 2001), entitled *Silicon Metal from Argentina, Brazil, and China: Investigations Nos. 731–TA–470–472 (Review).*

Issued: January 31, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–2967 Filed 2–2–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f))

[2] Vice Chairman Okun, former Commissioner Askey, and Commissioner Devaney not participating. Commissioner Bragg dissenting.

[3] Vice Chairman Okun, former Commissioner Askey, and Commissioner Devaney not participating.

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–865–867 (Final)]**

## Certain Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines

### Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports of certain stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines, provided for in subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with regard to those imports of the subject merchandise from Italy and the Philippines that were subject to affirmative critical circumstances determinations by the Department of Commerce.[3]

### Background

The Commission instituted these investigations effective December 29, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Alloy Piping Products, Inc., Shreveport, LA;

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Dennis M. Devaney not participating.

[3] Commissioner Lynn M. Bragg found that critical circumstances exist with regard to those imports of the subject merchandise from Italy and the Philippines that were subject to affirmative critical circumstances determinations by the Department of Commerce.

Flowline Division of Markovitz Enterprises, Inc., New Castle, PA; Gerlin, Inc., Carol Stream, IL; and Taylor Forge Stainless, Inc., North Branch, NJ. The final phase of the investigations involving Italy and the Philippines was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain stainless steel butt-weld pipe fittings from Italy and the Philippines were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). The final phase of the investigation involving Malaysia was scheduled at the same time even though Commerce made a negative preliminary determination in that investigation; Commerce ultimately made an affirmative final determination that imports of certain stainless steel butt-weld pipe fittings from Malaysia were being sold at LTFV within the meaning of section 735(b) of the Act (19 U.S.C. 1673d(b)).

Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 23, 2000 (65 FR 51328). The hearing was held in Washington, DC, on October 17, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 29, 2001. The views of the Commission are contained in USITC Publication 3387 (January 2001), entitled Certain Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines: Investigations Nos. 731–TA–865–867 (Final).

Issued: January 30, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–2965 Filed 2–2–01; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services

### FY 2001 Community Policing Discretionary Grants

**AGENCY:** Office of Community Oriented Policing Services, Department of Justice.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of grants to support the purchase of new technology under COPS Making Officer Redeployment Effective (''COPS MORE 2001''). Eligible applicants under COPS MORE 2001 are those state, local and other public law enforcement agencies, Indian tribal governments, and other public and private entities that employ career law enforcement officers.

**DATES:** COPS MORE 2001 Application Kits will be available after February 12, 2001. The COPS Office will accept applications for COPS MORE 2001 from February 12, 2001 through April 20, 2001. Applications received postmarked on or before March 23, 2001 and April 6, 2001 will be given priority consideration.

**ADDRESSES:** COPS MORE 2001 Application Kits may be obtained by writing to COPS MORE 2001, The Department of Justice Response Center, 1100 Vermont Avenue, NW., Washington, DC, 20530, or by calling the Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770, or the full application kit is also available on the COPS Office web site at: *http://www.usdoj.gov/cops.* Completed application kits should be sent to COPS MORE 2001, 7th Floor, COPS Office, 1100 Vermont Avenue, NW., Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** The Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:**

#### Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. COPS MORE 2001 is designed to expand the time available for community policing by current law enforcement officers, rather than fund the hiring or rehiring of additional law enforcement officers.

COPS MORE 2001 permits eligible agencies to seek funding to purchase equipment and technology. To qualify for funding, technology items must be purchased after the COPS MORE 2001 grant award start date and must increase the number of sworn officers engaged in community policing within the agency's jurisdiction.

As a result of this funding, the number of officers redeployed by agencies in community policing must be equal to or greater than the number of officers that would result from grants of the same amount for hiring new officers. Application Kits will be available after February 12, 2001. Completed Applications Kits must be received by the COPS Office by April 20, 2001. Applications received postmarked on or before March 23, 2001 and April 6, 2001 will be given priority consideration.

Applicants must provide a thorough explanation of how the proposed redeployment funds will actually result in the required increase in the number of officers deployed in community policing. Additionally, the applicant must specify within the COPS MORE 2001 Application a plan for retaining the awarded technology and continuing the increased level of redeployment into community policing with state or local funds following the conclusion of COPS MORE 2001 funding. Technical assistance with the development of community policing plans will be provided to jurisdictions in need of such assistance. Grants will be made for up to 75 percent of the cost of the requested equipment or technology up to $250,000 for jurisdictions with service populations of 50,000 or less, up to $500,000 for jurisdictions with service populations of 50,001 to 150,000 and up to $1,000,000 for jurisdictions with service populations over 150,000 with the remainder to be paid by state or local funds. Waivers of the non-federal share will be considered upon a showing of severe fiscal distress. COPS redeployment funds may not be used to replace funds that eligible agencies otherwise would have devoted to technology acquisition.

An award under COPS MORE 2001 will not affect the eligibility of an agency's application for a grant under any other COPS program.

(The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.)

Dated: January 22, 2001.

**Ralph Justus,**

*Acting Director.*

[FR Doc. 01–2906 Filed 2–2–01; 8:45 am]

**BILLING CODE 4410–AT–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 16, 2001, a complaint and a proposed consent decree in *United States and the*

*State of Colorado* v. *Cypress Amax Mineral Company and E&R Trucking Company,* Civil Action No. 01–M–0080, were lodged with the United States District Court for the District of Colorado.

In this action, the United States seeks recovery of approximately $1.52 million in unreimbursed response costs incurred in relation to Operable Unit #1 of the Smeltertown Superfund Site, located near Salida, Colorado, under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act. The State of Colorado seeks recovery of response costs to be incurred at the Site. Under the proposed decree, the defendants implement a remedial action selected by the United States Environmental Protection Agency, which is designed to prevent the further migration of hazardous substances at Operable Unit #1, and will pay all of EPA's and the State of Colorado's future response costs incurred at Operable Unit #1.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Colorado* v. *Cypress Amax Minerals Co., et al.,* D.J. Ref. 90–11–3–1522/1.

The proposed consent decrees may be examined at the Office of the United States Attorney, 1961 Stout Street, 11th Floor, Drawer 3608, Denver, CO 80294; at U.S. EPA Region VIII, 999 18th Street, Denver, Colorado 80202. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $20.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01–2908 Filed 2–2–01; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Goodyear Tire & Rubber Co.,* No. 6:96–cv–07215 (W.D.N.Y.), was lodged with the United States District Court for the Western District of New York on January 19, 2001, pertaining to the reimbursement of response costs, payment of damages for injury to natural resources, and implementation of the United States Environmental Protection Agency's selected remedial action for the Forest Glen Subdivision Superfund Site (''Site''), City of Niagara Falls and Town of Niagara, Niagara County, New York.

Under the proposed consent decree, The Goodyear Tire & Rubber Company (''Goodyear'') will implement U.S. EPA's selected remedy for operable units 2 and 3 (soils and ground water) at the Site. Goodyear will reimburse $8.6 million to the United States for previously incurred response costs and will pay all future and interim response costs incurred by the United States. Goodyear will also pay $445,000 as damages for the loss, destruction, or injury to natural resources, including $21,000 in costs incurred for assessment of such damages. Three other defendants—Niagara Falls U.S.A. Campsite, Inc., Guy T. Sottile, and John A. Brundage—will pay a total of $81,000 in response costs, based on ability to pay. The Consent Decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (''CERCLA''), and Section 7003 of the Resource Conservation and Liability Act (''RCRA''), 42 U.S.C. 6973. Appendices I and J to the Consent decree pertain to transfers of real property that will facilitate redevelopment of the Site; these have been lodged in blank and will be replaced by executed copies, possibly with minor modifications, before entry of the consent decree.

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, Environment and Natural Resource Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Goodyear Tire & Rubber Company,* No. 6:96–cv–07215 (W.D.N.Y.), and DOJ Reference No. 90–11–3–698. Commenters may request an opportunity for a public meeting in the affected area, in accordance with RCRA Section 7003(d), 42 U.S.C. 6973(d).

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Western District of New York, 138 Delaware Ave., Buffalo, New York 14202, (716) 551–4811; and (2) the United States Environmental Protection Agency (Region 2), 290 Broadway, New York 10007 (contact James Doyle ((212) 637–3105). 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 DOJ Reference Number and enclose a check in the amount of $27.75 for the consent decree only (111 pages at 25 cents per page reproduction costs), or $71.25 for the consent decree and all appendices (285 pages), made payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01–2909 Filed 2–2–01; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy 28 CFR 50.7, notice is hereby given that on January 11, 2001, a proposed Consent Decree in *United States* v. *J.B. Stringfellow, Jr. et al.,* Civil Action No. 83–2501 (R), was lodged with the United States District Court for the Central District of California. The Complaint in this action was brought pursuant to, *inter alia*, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, to recover costs incurred in connection with remedial activities at the Stringfellow Superfund Site in Riverside, California, and to obtain injunctive relief requiring the defendants to take further remedial activities at the site.

Pursuant to the proposed Consent Decree, Rainbow Canyon Manufacturing Corporation, which is alleged to be a contributor of hazardous substances to the Site, will resolve its liability to the United States and the State in this action through a payment to the United States of $150,000 to be exclusively for response actions in connection with the Stringfellow Superfund Site.

The Department of Justice will receive, for a period of thirty (30) days

from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. Comments should refer to *United States* v. *J.B. Stringfellow, Jr. et al.,* Civil Action No. 83–2501 (R), D.J. Ref. No. 90–11–2–24.

The proposed Consent Decree may be examined at either of the following locations: (1) The Office of the United States Attorney, Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California; or (2) Office of Regional Counsel, Environmental Protection Agency, 75 Hawthorne St., San Francisco, California. A copy of the consent decree can be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy of the consent decree, please enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce Gelber,**

*Chief, Environmental Enforcement Section.*

[FR Doc. 01–2907 Filed 2–2–01; 8:45 am]

**BILLING CODE 4410–15–M**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Notice of Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information is required to monitor contract compliance in support of NASA's mission and in response to procurement requirements.

**DATES:** All comments should be submitted on or before April 6, 2001.

**ADDRESSES:** All comments should be addressed to Mr. Michael Battaglia, Code R, National Aeronautics and Space Administration, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

*Title:* AST-Technology Utilization.

*OMB Number:* 2700–0009.

*Type of review:* Extension.

*Need and Uses:* NASA is required to collect, and NASA contractors/recipients performing research and development are required to actively search for, identify, and report promptly all new technologies (*i.e.,* ''inventions, discoveries, improvements, and innovations'') resulting from work performed under such contracts and agreements.

*Affected Public:* Business or other for-profit, Not-for-profit institutions.

*Number of Respondents:* 372.

*Responses Per Respondent:* 2.5.

*Annual Responses:* 930.

*Hours Per Request:* ¾ to 1 hour.

*Annual Burden Hours:* 895.

*Frequency of Report:* Annually.

**David B. Nelson,**

*Deputy Chief Information Officer, Office of the Administrator.*

[FR Doc. 01–2942 Filed 2–2–01; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposed Information Collection Comment Request: National Science Foundation-Applicant

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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

**DATES:** Written comments should be received by April 6, 2001 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to splimpto@nsf.gov.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Plimpton on (703) 292–7556 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* ''Antarartic Conservation Act Application Permit Form.''

*OMB Approval Number:* 3145–0034.

*Expiration Date of Approval:* August 31, 2001.

*Type of Request:* Intent to seek approval to extend an information collection for three years.

*Proposed Project:* The current Antarctic Conservation Act Application Permit Form (NSF 1078) has been in use for several years. The form requests general information, such as name, affiliation, location, etc., and more specific information as to the type of activity to be undertake which requires a permit such as taking of a native mammal or bird, entry into a protected area or introduction of non-native species.

*Use of the Information:* The purpose of the regulations (45 CFR part 670) is to conserve and protect the native mammals, birds, plants, and invertebrates of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Public Law 95–541, ad amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Public Law 104–227.

*Burden on the Public:* The Foundation estimates about 25 responses annually at one-half hour per response; this computes the approximately 12.5 hours annually.

Dated: January 30, 2001.

**Suzanne H. Plimpton,**

*NSF Reports Clearance Officer.*

[FR Doc. 01–2900 Filed 2–2–01; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of February 5, 12, 19, 26, March 5, 2001.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of February 5, 2001**

*Monday, February 5, 2001*

1:55 p.m. Affirmation Session (Public Meeting) (If needed)

**Week of February 12, 2001—Tentative**

*Wednesday, February 14, 2001*

10:25 a.m. Affirmation Session (Public Meeting) (If needed)

**Week of February 19, 2001—Tentative**

*Tuesday, February 20, 2001*

10:25 a.m. Affirmation Session (Public Meeting) (If needed)

10:30 a.m. Briefing on Spent Fuel Pool Accident Risk at Decommissioning Plants and Rulemaking Initiatives (Public Meeting) (Contact: George Hubbard, 301–415–2870)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

**Week of February 26, 2001—Tentative**

*Monday, February 26, 2001*

2:00 p.m. Meeting with the National Association of Regulatory Utility Commissioners (NARUC) (Public Meeting) (Contact: Spiros Droggitis, 301–415–2367)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

*Tuesday, February 27, 2001*

10:25 a.m. Affirmation Session (Public Meeting) (If needed)

10:30 a.m. Briefing on Threat Environment Assessment (Closed-Ex. 1)

**Week of March 5, 2001—Tentative**

There are no meetings scheduled for the Week of March 5, 2001.

**Week of March 12, 2001—Tentative**

*Monday, March 12, 2001*

1:25 p.m. Affirmation Session (Public Meeting) (If needed)

1:30 p.m. Discussion of Management Issues (Closed-Ex. 2)

lllllllll

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

**ADDITIONAL INFORMATION:** By a vote of 5–0 on January 29, the Commission determined pursuant to U.S.C.552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Fansteel, Inc. (Muskogee, Oklahoma Site); Parties' Joint Motion to Dismiss Fansteel, Inc.'s Appeal of the Presiding Officer's Decision to Grant a Hearing'' be held on January 31, and on less than one week's notice to the public.

By a vote of 5–0 on January 30, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of HYDRO RESOURCES, INC. Commission Review of LBP–99–40 (Presiding Officer decision holding proceeding in abeyance); Commission Review of last half of LBP–99–30 (Presiding Officer decision on NEPA/Environmental Justice)'' be held on January 31, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smi/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: February 1, 2001.

**David Louis Gamberoni,**

*Technical Coordinator, Office of the Secretary.*

[FR Doc. 01–3073 Filed 2–01–01; 2:13 pm]

BILLING CODE 7590–01–M

## OFFICE OF MANAGEMENT AND BUDGET

### Budget Rescissions and Deferrals

January 18, 2001.

Dear Mr. President: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report two deferrals of budgetary resources, totaling $1.9 billion.

The deferrals affect programs of the Department of State and International Security Assistance.

Sincerely,

William J. Clinton

*The White House, Washington.*

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20515.

January 18, 2001.

Dear Mr. Speaker: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report two deferrals of budgetary resources, totaling $1.9 billion.

The deferrals affect programs of the Department of State and International Security Assistance.

Sincerely,

William J. Clinton

*The White House, Washington.*

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20510.

**Deferral of Budget Authority**

**Report Pursuant to Section 1013 of Pub. L. 93–344**

[Deferral Number D01–1]

*Agency:* Department of State.

*Bureau:* Other.

*Account:* United States emergency refugee and migration assistance fund [1] (11X0400).

*New budget authority:* $14,967,000.

*Other budgetary resources:* 149,569,437.

*Total budgetary resources:* 164,536,437.

*Amount deferred for entire year:* 145,309,659 [2].

*Justification:* This deferral withholds funds available for emergency refugee and migration assistance for which no determination has been made by the President to provide assistance as required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22

[1] This account was the subject of a similar deferral in FY 2000 (D00–1).

[2] Subsequent releases have reduced the amount deferred to $127,276,659.

U.S.C. 2601), as amended, authorizes a fund that enables the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for emergency refugee and migration assistance to the Secretary of State, but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

*Estimated programmatic effect:* None.

**Deferral of Budget Authority**

**Report Pursuant to Section 1013 of Pub. L. 93–344**

[Deferral No. D01–2]

*Agency:* International Assistance Programs.

*Bureau:* International Security Assistance.

*Account:* Economic support fund [1] (72X1037, 720/11037, 720/21037, 721/21037).

*New budget authority:* $2,314,896,000.

*Other budgetary resources:* 95,102,439.

*Total budgetary resources:* 2,409,998,439.

*Amount deferred for entire year:* ,801,382,439 [2].

*Justification:* This deferral withholds funds available for international assistance pending the development of country-specific plans that assure that aid is provided in an efficient manner. Funds also are reserved for unanticipated program needs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country. This deferral of funds for the Economic Support Fund includes funds for the International Fund for Ireland.

*Estimated programmatic effect:* None.

[FR Doc. 01–2934 Filed 2–2–01; 8:45 am]

BILLING CODE 3110–01–P

[1] This account was the subject of a similar deferral in FY 2000 (D00–2).

[2] The amounts deferred by account are:

72X1037: $15,652,603

720/11037: 51,629,836

720/21037: 254,300,000

721/21037: 1,479,800,000

Total: 1,801,382,439

Subsequent releases have reduced the amount deferred to $1,759,362,439.

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of an Expired Information Collection: DPRS–2809

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of an expired information collection. DPRS–2809, Request to Change Federal Employees Health Benefits (FEHB) Enrollment or to Receive Plan Brochures, is used by former spouses and Temporary Continuation of Coverage recipients who are eligible to elect, cancel, or change health benefits enrollment during open season.

Approximately 27,000 DPRS–2809 forms are completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden is 20,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before March 7, 2001.

**ADDRESSES:** Send or deliver comments to:

Marie L'Etoile, Insurance Planning & Evaluation Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3415, Washington, DC 20415–3650

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

**FOR FURTHER INFORMATION CONTACT:** Donna G. Lease, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnal Management

**Steven R. Cohen,**

*Office of Personnel Management, Acting Director.*

[FR Doc. 01–2945 Filed 2–2–01; 8:45 am]

BILLING CODE 6325–50–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 11Aa3–2, SEC File No. 270–439, OMB Control Number 3235–0500;

Rule 15c3–4, SEC File No. 270–441, OMB Control No. 3235–0497;

Rule 15c3–1(c)(13), SEC File No. 270–443, OMB Control No. 3235–0499

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 11Aa3–2 provides that self-regulatory organizations (SROs) may, acting jointly, file a national market system plan or may propose an amendment to an effective national market system plan by submitting the text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by paragraphs (b)(4) and (5) of Rule 11Aa3–2.

The collection of information is designed to permit the Commission to achieve its statutory directive to facilitate the development of a national market system. The information is used to determine if a national market system plan, or an amendment thereto, should be approved and implemented.

The respondents to the collection of information are self-regulatory organizations, including national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board.

Ten respondents file an average total of eight responses per year, which corresponds to an estimated annual response burden of 267 hours. At an average cost per burden hour of $50, the resultant total related cost of

compliance for these respondents is $13,350 per year (267 burden hours multiplied by $50/hour = $13,350).

Rule 15c3–4 requires certain broker-dealers that are registered with the Commission as OTC Derivatives Dealers to establish, document, and maintain a system of internal risk management controls. The rule sets forth the basic elements for an OTC Derivatives Dealer to consider and include when establishing, documenting, and reviewing its internal risk management control system, which are designed to, among other things, ensure the integrity of an OTC Derivatives Dealer's risk measurement, monitoring, and management process, to clarify accountability at the appropriate organizational level, and to define the permitted scope of the dealer's activities and level of risk. The rule also requires that management of an OTC Derivatives Dealer must periodically review, in accordance with written procedures, the OTC Derivatives Dealer's business activities for consistency with its risk management guidelines.

The staff estimates that the average amount of time an OTC Derivatives Dealer will spend implementing its risk management control system is 2,000 hours and that, on average, an OTC Derivatives Dealer will spend approximately 200 hours each year reviewing and updating its risk management control system. Currently, one firm is registered with the Commission as an OTC Derivatives Dealer. The staff estimates that approximately five additional OTC Derivatives Dealers may become registered within the next three years. Accordingly, the staff estimates the total burden for six OTC Derivatives Dealers to be 1,200 hours annually for reviewing and updating its risk management control system.

The staff believes that the cost of complying with Rule 15c3–4 will be approximately $82.50 per hour.[1] This per hour cost is based upon the annual average hourly salary for a compliance manager, who would generally be responsible for initially establishing, documenting, and maintaining an OTC Derivatives Dealer's internal risk management control system. The total annual cost for all affected OTC Derivatives Dealers is estimated to be $275,000, based on five firms each spending 10,000 hours to implement an internal risk management control system at $82.50 per hour within the next three years.

On December 17, 1997, the Commission proposed for comment amendments to its net capital rule, Rule 15c3–1, which would define the term ''nationally recognized statistical rating organization'' (''NRSRO'').[2] Rule 15c3–1 currently requires broker-dealers, when computing net capital, to deduct from their net work certain percentages of the market value (''haircuts'') of their proprietary securities positions. Broker-dealers' proprietary positions in commercial paper, nonconvertible debt securities, and nonconvertible preferred stock are accorded preferential treatment under the net capital rule, in the form of smaller haircuts, if the instruments are rated investment grade by at least two NRSROs.

The Commission believes that defining the term NRSRO within the net capital rule would provide more transparency in the NRSRO application and review process. In the proposed amendments, the Commission sets forth a list of attributes that it would consider when reviewing a credit rating organization's NRSRO application. Further, the proposed amendments would formalize the appeals process if a credit rating organization is not provided with the NRSRO status it requests.

Currently, the Division utilizes the no-action letter process to determine which credit rating organizations may be considered NRSROs under the net capital rule. Through the no-action letter process, the Division has provided seven credit ratings organizations with written assurance that it will not recommend enforcement action against broker-dealers that rely on their credit ratings for purposes of the net capital rule.[3] The Division has issued one letter in which the firm requesting NRSRO status was not provided with the assurance it requested.

It is difficult to estimate the number of potential respondents to this collection of information. However, based on the current number of NRSROs and the previous inquiries of credit rating organizations, it appears reasonable to estimate that eight credit rating organizations may apply with the Commission pursuant to the proposed amendments. Based on conversations with rating organizations currently treated as NRSROs under the net capital rule and the Commission's experience in this area, it is estimated that the average amount of time necessary to compile the information required to submit an NRSRO application is approximately 100 hours. Therefore, because there may be eight potential respondents to this collection and because it is estimated that it will take approximately 100 hours to collect the information necessary for an adequate submission, the total reporting and recordkeeping burden is estimated to be approximately 800 hours.

Because the proposed amendments only require a one-time application process, which includes any amendments to the initial application, there is no recurring reporting or recordkeeping requirement and thus no annual reporting or recordkeeping requirement. However, NRSROs will be obligated to inform the Commission of any material changes to the information previously collected under the proposed amendments.

The staff believes that the cost of complying with the proposed amendments will be approximately $105 per hour.[4] This per hour cost is based upon the annual average hourly salary for a senior analyst, who would generally be the personnel responsible for preparing an NRSRO application. The total annual startup cost for all affected credit rating organizations is estimated to be $84,000, based on eight firms spending a total of 800 hours to prepare NRSRO applications.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

[1] Per SIA Management and Professional Earnings, Table 051 (Compliance Manager) + 35% overhead (based on end-of-year 1998 figures).

[2] *See* Securities Exchange Act Release No. 39457 (December 17, 1997), 62 FR 68018 (December 30, 1997). The Commission has not yet adopted a final rule defining the term NRSRO. The Commission's Division of Market Regulation (the ''Division'') has reviewed comments received in connection with the proposal and is preparing a recommendation for the Commission to determine what action, if any, should be taken.

[3] Four of these firms have since combined or are in the process of combining with other NRSROs.

[4] Per SIA Management and Professional Earnings, Table 145 (Senior Research Analyst) + 35% overhead (based on 1999 annual base salary).

Dated: January 29, 2001.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2953 Filed 2–2–01; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 1–15161]**

## Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (3Dshopping.com, Common Stock, No Par Value, and Warrants To Purchase Common Stock)

January 30, 2001.

3Dshopping.com incorporated under the laws of California (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value, and Warrants to Purchase Common Stock (referred to collectively herein as the ''Securities''), from listing and registration on the American Stock Exchange (''Amex'').

After discussing with representatives of the Amex the Securities' eligibility to remain listed on the exchange in light of the Amex's continued listing maintenance requirements for listed securities, the Company has determined to withdraw the Securities from listing and registration on the Amex. The Company has indicated that it will pursue the possibility of having the Securities quoted in the unlisted over-the-counter market once they have ceased to trade on the Amex.

The Company has stated in its application that it has complied with the rules of the Amex governing the withdrawal of its Securities and that its application relates solely to the withdrawal of the Securities from listing and registration on the Amex and shall have no effect upon the Company's continued obligation to file reports with the Commission pursuant to Sections 12 and 13 of the Act.[3]

Any interested person may, on or before February 21, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–2954 Filed 2–2–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l* and 15 U.S.C. 78m.

[4] 17 CFR 200.30–3(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

**[Release 34–43900; File No. 600–23]**

## Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

January 29, 2001.

Notice is hereby given that on January 10, 2001, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a request asking that the Commission grant GSCC full registration as a clearing agency or in the alternative extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration.[1] The Commission is publishing this notice and order to solicit comments from interested persons and to extend GSCC's temporary registration as a clearing agency through July 31, 2001.

On May 24, 1988, pursuant to sections 17A(b) and 19(a) of the Act [2] and Rule 17Ab2–1 promulgated thereunder,[3] the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three years.[4] The Commission subsequently has extended GSCC's registration through January 31, 2001.[5]

The Commission today is extending GSCC's temporary registration as a clearing agency in order that GSCC may continue to act as a clearing agency while the Commission seeks comment on granting GSCC permanent registration as a clearing agency. The Commission expects to publish notice requesting comments on permanent registration as a clearing agency during the first quarter of this year.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[6] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

All submissions should refer to File No. 600–23 and should be submitted by February 26, 2001.

*It is Therefore Ordered* that GSCC's temporary registration as a clearing agency (File No. 600–23) be and hereby is extended through July 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2956 Filed 2–2–01; 8:45am]

BILLING CODE 8010–01–M

[1] Letter from Jeffrey F. Ingber, General Counsel and Managing Director, GSCC (January 10, 2001).

[2] 15 U.S.C. 78q–1(b) and 78s(a).

[3] 17 CFR 240.17Ab2–1.

[4] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[5] Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; and 43089 (July 28, 2000), 65 FR 48032.

[6] 15 U.S.C. 768s(a)(1).

[7] 17 CFR 200.30–3(a)(16).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43901; File No. SR–Phlx–01–12]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Automatic Price Improvement for Equities Trading in Decimals

January 30, 2001.

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 26, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On January 29, 2001, the Phlx amended the proposal.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to codify a new automated price improvement feature for equities traded in decimals into Phlx Rule 229.07. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis in accordance with the provisions of this Rule. Securities admitted to dealings on the equity floor are eligible for trading on the PACE System in which equity specialists and member organizations may choose to participate. The conditions under which orders will be accepted and executed are set forth below. When used in the Rule, PRL means a combined round-lot and odd-lot order, and PACE Quote means the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') quote, as appropriate. The PACE rules, conditions and guidelines do not apply to orders not on the system, and existing rules governing orders not on the system are not affected hereby.

Supplementary Material:

General

The following PACE execution parameters are minimum standards applicable to agency orders received through PACE. Orders transmitted to the floor through the PACE system can be executed on a basis better than the applicable minimum standard:

.01–.06 No change.

.07 (a) Member organizations which enter market orders after the opening may elect to have such orders executed

(i) in accordance with the procedures set forth in Supplementary Material Section .05 or,

(ii) if such execution price would be outside the New York market high-low range for the day manually at or within the New York market high-low range of the day.

(b) Market orders (round-lots of 600 to 2000 shares or such greater size which the specialist agrees to accept and PRL's of 601 to 2099 shares or such greater size which the specialist agrees to accept) which are entered after the opening and which the specialist has not agreed to accept for automatic execution shall not be subject to the execution parameters set forth in Supplementary Material .05 and shall be executed in accordance with Supplementary Material .10(b) and other applicable rules of the Philadelphia Stock Exchange; provided, however, that the odd-lot portion of PRL's of 601 or more shares shall be executed at the same price as the round-lot portion. In the case of a PRL order, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the first round-lot portion is executed.

(c) Price Improvement for PACE Orders.

(i) Automatic Price Improvement—Where the specialist voluntarily agrees to provide automatic price improvement to all customers and all eligible market orders in a security, automatically executable market and marketable limit orders in New York Stock Exchange and American Stock Exchange listed securities received through PACE for 599 shares or less shall be provided with automatic price improvement *from the PACE Quote when received* of 1/16 for equities trading in fractions or, *either* $.01 *or a percentage of the PACE Quote when the order is received* for equities trading in decimals [from the PACE Quote when received] beginning at 9:30 A.M., except where:

(A) a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale (except as provided in (E) below); or

(B) a buy order would be improved to the last sale price which is a downtick or a sell order would be improved to the last sale price which is an uptick (except as provided in (E) below). The PACE System will determine whether the last sale price is a downtick or an uptick. The PACE System does not recognize changes from the previous day's close.

In these situations, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. A specialist may voluntarily agree to provide automatic price improvement to larger orders in a particular security to all customers under this provision.

A specialist may choose to provide automatic price improvement where the PACE Quote is 3/16 or greater or 1/8 or greater for equities trading in fractions; [, or .03 or greater or .05 or greater] for equities trading in decimals*, a specialist may choose to provide automatic price improvement of: (i) $.01 where the PACE Quote is either $.05 or greater, or $.03 or greater, or (ii) where the PACE Quote is $.02 or greater, a percentage of the PACE Quote when the order is received, up to 50%, rounded to the nearest penny, and at least $.01, in a particular security to all customers.*

(C) Automatic price improvement will not occur for odd-lot orders, nor where the execution price before or after the application of automatic price improvement would be outside the primary market high/low range for the day, if so elected by the entering member organization.

(D) The POES window of Supplementary Material .05 above does not apply where an order is subject to automatic price improvement or manual price protection.

(E) Sell Order Enhancement I—A specialist may choose to give automatic price improvement to all sell orders of 100 shares or more, as determined by the specialist, in a particular security which would be improved to the last sale on an uptick; or,

Sell Order Enhancement II—A specialist may choose to give automatic price improvement to all sell orders of 100 shares or more, as determined by the specialist, in a particular security which would be improved to a price higher than the last sale.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* January 29, 2001 letter from Edith Hallahan, Deputy General Counsel, Phlx to Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission (''Amendment No. 1''). At the Commission's request, the Phlx filed Amendment No. 1, which asks that the proposal be implemented on a six-month pilot basis.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Phlx has asked the Commission to waive the 5-day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

(ii) Mandatory Manual Double-up/Double-down Price Protection—Where the specialist does not agree to provide automatic price improvement in a security, the specialist must provide manual double-up/double-down price protection in any instance where the bid/ask of the PACE Quote is ⅛ or greater for equities trading in fractions, or .05 or greater for equities trading in decimals, beginning at 9:30 A.M., to all customers and all eligible orders in a security, where the PACE System shall stop eligible automatically executable market and marketable limit orders of 599 shares or less in New York Stock Exchange or American Stock Exchange listed securities received through PACE in double-up/down situations in order to receive an opportunity for price improvement over the PACE Quote when received. Orders are ''stopped'' by the specialist at the PACE Quote when received, meaning that the order is guaranteed to receive at least that price by the end of the trading day. A specialist may voluntarily agree to provide manual double-up/double-down price protection to larger orders in a particular security to all customers under this provision. Where the execution (stop) price would be outside the primary market high/low range for the day, if so elected by the entering member organization, the order will be handled manually pursuant to paragraph (a) above. Odd-lot orders are not eligible for double-up/double-down manual price protection.

A double-up/double down situation is defined as a trade that would be at least:

(i) ¼ (up or down) for equities trading in fractions, or .10 (up or down) for equities trading in decimals from the last regular way sale on the primary market; or

(ii) ¼ for equities trading in fractions, or .10 for equities trading in decimals from the regular way sale that was the previous intraday change on the primary market.

(iii) Member organizations entering orders may elect to participate in manual double-up/double-down price protection. Failure to elect will result in the activation of the double-up/double-down feature for that User, but specialists determine whether to provide automatic price improvement in a particular security.

(iv) Extraordinary Circumstances—Both automatic price improvement and manual double-up/double-down price protection may be disengaged in a security or floor-wide in extraordinary circumstances with the approval of two Floor Officials. In addition to fast market conditions, for purposes of this paragraph, extraordinary circumstances also include systems malfunctions and other circumstances that limit the Exchange's ability to receive, disseminate or update market quotations in a timely and accurate manner.

* * * * *

## 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 its proposal and discussed any comments it received regarding the proposal. 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 proposes to incorporate a new form of automatic price improvement for equities trading in decimals, based on a percentage of the spread between the bid and offer.

According to the Phlx, price improvement statistics are often used by order flow providers as a measure of both a specialist's and an exchange's execution quality. Broker-dealers are subject to the fiduciary duty of best execution respecting their order routing decisions. The Phlx has long sought to encourage the development of features, and specialist participation in such features, that contribute to higher price improvement figures and thus encourage better execution quality for the Exchange. The proposal is intended to codify a new automatic price improvement choice for equities trading in decimals that enables price improvement greater than one penny.

Currently, specialists may choose to provide automatic price improvement of $.01 for equities trading in decimals (where the PACE[7] Quote[8] is either $.05 or greater, or $.03 or greater).[9] Automatic price improvement is a feature of the Exchange's PACE System that automatically executes eligible orders at a price better than the PACE Quote. Although participation in automatic price improvement (as well as participation in PACE as a whole) is voluntary, specialists are required to manually provide price improvement in certain situations described in Phlx Rule 229.07(c)(ii) (double downtick protection).

The proposal amends Phlx Rule 229, Supplementary Material .07(c), such that, for equities trading in decimals, a specialist may choose to provide automatic price improvement in the form of a percentage of the PACE Quote when an order is received, up to 50%, rounded to the nearest penny. This ''percentage price improvement'' feature would be available to all customers where the PACE Quote is $.02 or greater in a particular security. For example, where the PACE Quote is $10.00–$10.50 (a spread of $.50), a specialist electing this feature and choosing a percentage of 30 would provide automatic price improvement of $.15 to an eligible PACE order; thus, an incoming eligible sell order would receive an execution price of $10.15, whereas, absent automatic price improvement, it would be automatically executed at $10.00. If the specialist in this example chooses a percentage of 25, the resulting $.125 (12–½ cents) would be rounded down to 12 cents. Thus, the new feature provides automatic price improvement greater than one penny.[10]

2. Statutory Basis

The Phlx believes that the proposal is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of section 6(b)(5)[12] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by extending automated price improvement more widely to equities traded in decimals.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will result in any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

[7] PACE is the Exchange's automated order delivery, routing, execution and reporting system for equities.

[8] The PACE Quote is the NBBO, or National Best Bid/Offer.

[9] *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000) (SR–Phlx–00–08).

[10] The new price improvement feature will be implemented on a six-month pilot basis, beginning January 29, 2001.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designated, it has become effective pursuant to section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) [14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Phlx has requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative waiting period, to allow the Phlx to implement the feature for decimal trading beginning January 29, 2001. The Commission finds good cause for waiving both the 5-day pre-filing notice requirement and the 30-day operative waiting period. Waiving these requirements will allow investors to reap the benefits of the Phlx's new price improvement program without delay. For these reasons, the Commission finds good cause for waiving the 5-day pre-filing notice requirement and the 30-day operative waiting period.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–01–12 and should be submitted by February 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–2955 Filed 2–2–01; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

## TENNESSEE VALLEY AUTHORITY

### Paperwork Reduction Act of 1995, as Amended by Pub. L. 104–13; Proposed Collection; Comment Request

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than April 6, 2001.

**SUPPLEMENTARY INFORMATION:**

*Type of Request:* Regular submission.

*Title of Information Collection:* TVA Police Customer Satisfaction Survey.

*Frequency of Use:* On occasion.

*Affected Public:* Individuals and Small Businesses.

*Small Businesses or Organizations Affected:* Yes.

*Estimated Number of Annual Responses:* 2,000.

*Estimated Total Annual Burden Hours:* 167.

*Estimated Average Burden Hours Per Response:* 5 minutes.

*Need For and Use of Information:* This information collection will be randomly distributed to individuals who use TVA facilities and come in contact with TVA Police Officers (*i.e.*, campers, boaters, marina operators, etc.) to provide feedback on the quality of the security and safety provided by TVA Police on TVA-managed public lands. The information collection will be used to evaluate current security and safety policies and to identify new opportunities for improvements.

**Jacklyn J. Stephenson,**

*Senior Manager, Enterprise Operations Information Services.*

[FR Doc. 01–2910 Filed 2–2–01; 8:45 am]

BILLING CODE 8120–08–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending January 26, 2001

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–2001–8771.

*Date Filed:* January 24, 2001.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC31 N&C/CIRC 0154 dated 23 January 2001, Mail Vote 104—Resolution 015b, TC31 North and Central Pacific Add-on Amounts, (USA/US Territories), Intended effective date: 1 April 2001.

*Docket Number:* OST–2001–8788.

*Date Filed:* January 26, 2001.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC23 EUR–SEA 0105 dated 19 December 2000, Europe-South East Asia Resolutions r1–r28, TC23 EUR–SEA 0106 dated 19 January 2001, (Technical Corrections), Minutes—PTC23 EUR–SEA 0107 dated 19 January 2001, Tables—PTC23 EUR–SEA Fares 0026 dated 5 January 2001, Intended effective date: 1 April 2001.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 01–2968 Filed 2–2–01; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending December 22, 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–2000–8563.
*Date Filed:* December 19, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC31 N&C/CIRC 0139 dated 14 November 2000 r1–2, PTC31 N&C/CIRC 0140 dated 14 November 2000 r3–r9, PTC31 N&C/CIRC 0141 dated 14 November 2000 r10–r29, PTC31 N&C/CIRC 0142 dated 14 November 2000 r30–r45, PTC31 N&C/CIRC 0145 dated 21 November 2000 (Technical Correction), PTC31 N&C/CIRC 0148 dated 8 December 2000 (Technical Correction), Minutes—PTC31 N&C/CIRC 0149 dated 15 December 2000, PTC31 N&C/CIRC 0151 dated 19 December 2000 (Correction), Tables—PTC31 N&C/CIRC Fares 0060 dated 17 November 2000, PTC31 N&C/CIRC Fares 0061 dated 17 December 2000, PTC31 N&C/CIRC Fares 0062 dated 17 December 2000, PTC31 N&C/CIRC Fares 0065 dated 21 November 2000 (Technical Correction), PTC31 N&C/CIRC Fares 0066 dated 21 November 2000 (Technical Correction), PTC31 N&C/CIRC Fares 0077 dated 1 December 2000 (Technical Correction), PTC31 N&C/CIRC Fares 0078 dated 8 December 2000 (Technical Correction), PTC31 N&C/CIRC Fares 0079 dated 8 December 2000 (Technical Correction), Intended effective date: April 2001.

*Docket Number:* OST–2000–8564.
*Date Filed:* December 19, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC31 N&C/CIRC 0143 dated 14 November 2000, TC31 North & Central Pacific—TC3-Central America, South America r1–19, Tables—PTC31 N&C/CIRC Fares 0063 dated 17 November 2000, Intended effective date: 1 April 2001.

*Docket Number:* OST–2000–8565.
*Date Filed:* December 19, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC31 N&C/CIRC 0144 dated 14 November 2000 r1–15, PTC31 N&C/CIRC 0146 dated 1 December 2000 (Technical Correction), Minutes—PTC31 N&C/CIRC 0150 dated 15 December 2000, Tables—PTC31 N&C/CIRC Fares 0064 dated 17 November 2000, Intended effective date: 1 April 2001.

*Docket Number:* OST–2000–8566.
*Date Filed:* December 21, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC COMP Fares 0216 dated 19 December 2000, TC12/TC123 North Atlantic-Resolution 015n USA, Add-on Amounts, Report—PTC COMP 0739 dated 19 December 2000, Intended effective date: 1 February 2001.

**Dorothy Y. Beard,**
*Federal Register Liaison.*
[FR Doc. 01–2970 Filed 2–2–01; 8:45 am]
BILLING CODE 4910–62–P

---

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending January 19, 2001

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–2001–8691.
*Date Filed:* January 16, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC COMP 0753 dated 16 January 2001, Mail Vote 103—Resolution 011a (Amending), Mileage Manual Non-TC Member/Non-IATA Carrier Sectors, Intended effective date: 1 February 2001 for implementation 1 April 2001.

*Docket Number:* OST–2001–8692.
*Date Filed:* January 16, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC COMP 0754 dated 19 January 2001, Mail Vote 101—Resolution 010o, Special Adopting Resolution—fares to/from Gaza City, Intended effective date: 1 February 2001.

*Docket Number:* OST–2001–8734.
*Date Filed:* January 19, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC31 N&C/CIRC 0147 dated 1 December 2000, Mail Vote 097—Resolution 074r, TC31 North and Central Pacific, PEX Fares from Japan to North America, Caribbean, Intended effective date: 1 April 2001.

**Dorothy Y. Beard,**
*Federal Register Liaison.*
[FR Doc. 01–2971 Filed 2–2–01; 8:45 am]
BILLING CODE 4910–62–P

---

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending January 12, 2001

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–2001–8670.
*Date Filed:* January 11, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC12 USA–EUR 0110 dated 12 January 2001, Mail Vote 102—Resolutions 072ss and 075ss, Excursion Fares from Europe to USA, APEX Fares from Europe to USA, intended effective date: 25 January 2001.

**Dorothy Y. Beard,**
*Federal Register Liaison.*
[FR Doc. 01–2972 Filed 2–2–01; 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 Under Subpart Q During the Week Ending January 19, 2001

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–2001–8694.
*Date Filed:* January 16, 2001.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* February 6, 2001.
*Description:* Application of Barron World Aviation, Ltd., L.L.C., d/b/a Barron World Airways pursuant to 49 U.S.C. Section 41102 and Subpart B, applies for a certificate of public convenience and necessity authorizing interstate charter air transportation.

*Docket Number:* OST–2001–8695.
*Date Filed:* January 16, 2001.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* February 6, 2001.
*Description:* Application of Sunrise Airlines, Inc., requests a waiver of 14 C.F.R. Section 204.7 so that Sunrise may resume regularly scheduled commuter

air service operations during its Chapter 11 reorganization case, on or before February 16, 2001.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 01–2969 Filed 2–2–01; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**[Docket Number 01–02]**

### Report to the Congress Regarding the Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking and Financial Services of the United States House of Representatives regarding differences in capital and accounting standards among the federal banking and thrift agencies.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) has prepared this report as required by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). FDICIA requires the OCC to provide a report to Congress on any differences in capital standards among the federal financial regulatory agencies. This notice is intended to satisfy the FDICIA requirement that the report be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner (202) 874–5070; Louise A. Francis, National Bank Examiner, Office of the Chief Accountant (202) 874–1306; Laura Goldman, Senior Attorney, Legislative and Regulatory Activities Division (202) 874–5090; or Ron Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

### Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

### Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking and Financial Services of the United States House of Representatives, Submitted by the Office of the Comptroller of the Currency

December 2000.

This report [1] describes the differences among the capital requirements of the Office of the Comptroller of the Currency (OCC) and those of the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS).[2] The report is divided into five sections. The first section provides a short overview of the current capital requirements; the second section discusses the differences in the capital standards; the third section briefly discusses recent amendments made by the Agencies to their respective capital standards to promote more consistent capital standards; the fourth section discusses recent interagency proposals; and the fifth section discusses the differences in accounting standards related to capital.

### A. Overview of the Risk-Based Capital Standards

*1. Credit Risk Component*

Since the adoption of the risk-based capital guidelines in 1989, all of the Agencies have applied similar capital standards to the institutions they supervise. The risk-based capital guidelines implement the Accord on International Convergence of Capital Measurement and Capital Standards adopted by the Basel Committee on Banking Supervision (Basel Accord) [3] in July, 1988.

The risk-based capital guidelines establish a framework for imposing capital requirements generally based on credit risk. Under the risk-based capital guidelines, balance sheet assets and off-balance sheet items are categorized, or ''risk weighted,'' according to the relative degree of credit risk inherent in the asset or off-balance sheet item. The risk-based capital guidelines specify four risk-weight categories—zero percent, 20 percent, 50 percent, and 100 percent. Assets or off-balance sheet items with the lowest levels of credit risk are placed in the lowest risk-weight category; those presenting greater levels of credit risk receive a higher risk weight. Thus, for example, securities issued by the U.S. government are risk weighted at zero percent; one- to four-family residential mortgages are risk weighted at 50 percent; and unsecured commercial loans are risk weighted at 100 percent.

Off-balance sheet items must first be translated into an on-balance sheet credit equivalent amount by applying the conversion factors, or multipliers, that are specified in the risk-based capital guidelines of the Agencies. This credit equivalent amount is then assigned to one of the four risk-weight categories. For example, a bank may extend to its customer an unsecured line of credit that the customer may borrow against for up to two years. The unused portion of this two year line of credit—that is, the amount of available credit that the customer has not drawn—is reported as an off-balance sheet item. Under the Agencies' risk-based capital guidelines, this unused portion is translated into an on-balance sheet credit equivalent amount and then assigned a risk weight according to the credit risk of the counterparty.

Once the assets and off-balance sheet items have been risk weighted, the total amount of all risk-weighted assets and off-balance sheet items is used to determine the minimum total amount of capital required for that institution. Specifically, the risk-based capital guidelines of the Agencies require each institution to maintain a ratio of total capital to risk-weighted assets of at least 8 percent. Total capital is comprised of two components—Tier 1 capital (core capital) and Tier 2 capital (supplementary capital). Tier 1 capital includes common stockholders' equity, noncumulative perpetual preferred stock and related surplus, and minority interests in consolidated subsidiaries.

[1] This report is made pursuant to section 37(c) of the Federal Deposit Insurance Act (FDIA). 12 U.S.C. 1831n(c). Section 37(c) was added to the FDIA by section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. No. 102–242, 105 Stat. 2236 (December 19, 1991). Section 121 of FDICIA supersedes section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101–73, 103 Stat. 183 (August 9, 1989), which imposed similar reporting requirements.

[2] The OCC is the primary supervisor of national banks. Bank holding companies and state-chartered banks that are members of the Federal Reserve System are supervised by the FRB. State-chartered nonmember banks are supervised by the FDIC. The OTS supervises savings associations and savings and loan holding companies. In this report, the term ''Banking Agencies refers to the OCC, FRB, and the FDIC; the term ''Agencies'' refers to all four of the agencies, including the OTS.

[3] The Basel Committee on Banking Supervision has issued a consultative paper that describes and solicits views on substantial revisions to the Basel Accord. The paper, entitled ''A New Capital Adequacy Framework,'' was published in June, 1999. Comments were due by March 31, 2000.

Tier 2 capital includes the allowance for loan and lease losses, certain types of preferred stock, some hybrid capital instruments, and certain subordinated debt. Some of the Tier 2 capital instruments, as well as the total amount of Tier 2 capital, are subject to limitations and conditions provided by the risk-based capital guidelines of the Agencies. In addition, the risk-based capital guidelines require the deduction of certain assets from either Tier 1 capital or total capital. Such assets include, for example, goodwill and certain other intangible assets and the amount of some servicing assets in excess of prescribed limits.

In addition to Tier 1 and Tier 2 capital, the risk-based capital guidelines of the Banking Agencies also permit certain banks with significant trading activities to hold limited amounts of Tier 3 capital to satisfy market risk requirements. *See* Section A.2. for a summary of the market risk component.

Institutions generally are expected to hold capital above the required minimum level. In 1999, most national banks, for example, on average had risk-based capital ratios in excess of 11.72. percent. In addition to the risk-based capital requirement, the Agencies also impose a minimum leverage capital requirement, expressed as a percentage of Tier 1 capital to adjusted total assets. Unlike the risk-based capital ratio, the leverage capital ratio is based on total balance sheets assets, not total risk-weighted assets. This means that the leverage capital ratio is computed without regard to risk-weight categories and without including off-balance sheet items.[4]

*2. Market Risk Component*

In 1996, the Banking Agencies amended their respective risk-based capital standards to take account of market risk. *See* 61 FR 47358 (September 6, 1996).[5] Generally, under the Banking Agencies' market risk rules, banks and bank holding companies with significant trading activities must measure and hold capital for exposure to general market risk and specific market risk. General market risk represents the change in market value of on- and off-balance sheet positions resulting from broad market movements arising from fluctuations in interest rates, equity prices, foreign exchange rates, and commodity prices. Specific market risk refers to changes in the market value of individual positions due to factors other than broad market movements and includes such risk as credit risk of an instrument's issuer.

Under the 1996 market risk rule, an institution measured specific risk through a standardized approach or a valid internal model. The standardized approach uses a risk weighting process that relies on a category-based fixed capital charge. An institution using an internal model, however, faced a burdensome dual calculation of specific risk because it still had to use the standardized approach to determine the minimum specific risk charge. The rules required an institution to hold capital for specific risk at least equal to 50 percent of the specific risk charge calculated using the standardized approach.

In light of advances in the modeling of specific risk, the Banking Agencies concluded that it was not necessary to impose a minimum specific risk charge. As a result, in December 1997, the Banking Agencies issued interim rule that eliminated the minimum specific risk capital charge for certain institutions using a qualifying internal model to measure specific risk. 62 FR 68064 (December 30, 1997) (interim rule with request for comments). The interim rule was adopted in final form, without substantive change, in April, 1999. 64 FR 19034 (April 19, 1999).

*3. Interest Rate Risk Component*

In 1995, the Banking Agencies amended their respective risk-based capital standards to include an evaluation of interest rate risk, as measured by a change in a bank's exposure to declines in the economic value of its capital as a result of changes in interest rates. 60 FR 39490 (August 2, 1995). The Banking Agencies subsequently issued a joint policy statement that provides guidance on sound practices for managing interest rate risk and sets out standards for evaluating the effectiveness of a bank's interest rate risk management. 61 FR 33166 (June 26, 1996).

The OTS has adopted a regulation that adds an interest rate risk component to its risk-based capital standards. The OTS's regulation differs from the Banking Agencies' rules in that it establishes a standardized measure of interest rate risk and, when fully implemented, will require an explicit capital charge against that risk. The OTS's regulation would require a deduction from capital for thrifts with greater than normal interest rate risk exposure; the amount of the deduction would be one-half the difference between the thrift's actual level of exposure and the normal level of exposure. The OTS has partially implemented this rule by formally reviewing institutions' interest rate risk, but does not currently require thrifts to take deductions from capital.

**B. Remaining Differences in Capital Standards of the Agencies**

Although the Agencies have adopted common leverage capital requirements and risk-based capital guidelines, a few differences in their respective capital standards remain. These differences are described in this section.

*1. Assets Subject To Guarantee Arrangements by the Federal Savings and Loan Insurance Corporation (FSLIC)/Federal Deposit Insurance Corporation*

The OCC risk-based capital guidelines assign assets with FDIC guarantees (or guarantees issued by the former FSLIC) to the 20 percent risk-weight category, the same category to which claims on depository institutions and government-sponsored agencies are assigned. The other Banking Agencies also assign these assets to the 20 percent weight category. The OTS assigns these assets to the zero percent risk-weight category.

*2. Limitation on Subordinated Debt and Limited-Life Preferred Stock*

The OCC limits the amount of Tier 2 capital that may be included in total capital to no more than 100 percent of Tier 1 capital. Consistent with the Basel Accord, under the OCC guidelines, the amount of subordinated debt and limited-life preferred stock included in Tier 2 capital may not constitute more than 50 percent of Tier 1 capital. In addition, the OCC risk-based capital guidelines require that subordinated debt and limited-life preferred stock be discounted 20 percent in each of the five years prior to maturity. The other Banking Agencies have similar rules.

[4] In addition to the risk-based capital guidelines, the Agencies have issued regulations implementing the prompt corrective action (PCA) provisions of the FDICIA. FDICIA requires that the Agencies take certain supervisory actions if an institution's capital declines to unacceptable levels. *See* 12 U.S.C. 1831o. The PCA regulations establish four capital categories that are defined in terms of three separate capital measures (the risk-based capital ratio, the leverage ratio, and the ratio of Tier 1 capital to risk-weighted assets). These four categories are: Well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized. By way of illustration, an institution is well capitalized if its risk-based capital ratio is 10 percent or greater; its leverage ratio is 5 percent or greater; and its ratio of Tier 1 capital to risk-weighted assets is 6 percent or greater. A fifth PCA category—critically undercapitalized—is defined, as the statute requires, as a 2 percent ratio of tangible equity to total assets. *See* 12 CFR part 6 (1997) (OCC PCA regulations).

[5] Because of differences in portfolio characteristics and permissible activities between banks and thrifts, the OTS did not add a market risk component to its risk-based capital standards.

The OTS risk-based capital rules also limit the amount of Tier 2 capital that may be included in total capital to 100 percent of Tier 1 capital, but do not contain any sublimits on the total amount of limited-life instruments that may be included in Tier 2 capital. In addition, the OTS allows savings associations the option of either (1) discounting maturing capital instruments (issued on or after November 7, 1989) by 20 percent a year over the last five years prior to maturity, or (2) including the full amount of such instruments, provided that the amount maturing in any of the next seven years does not exceed 20 percent of the total capital of the savings association.

*3. Subsidiaries Other Than Financial Subsidiaries*

Consistent with the Basel Accord, the Banking Agencies generally require that ''significant majority-owned subsidiaries'' [6] be consolidated with the parent institution for both regulatory reporting and capital purposes. If a subsidiary is not consolidated, the bank's investment in the subsidiary constitutes a capital investment in the subsidiary. The OCC risk-based capital guidelines specifically provide that capital investments in an unconsolidated subsidiary must be deducted from the total capital of the bank. The OCC risk-based capital guidelines also permit the OCC to require the deduction of investments in other subsidiaries and associated companies on a case-by-case basis. *See* 12 CFR Part 3, Appendix A, section 2(c)(4)(i).

The FRB risk-based capital guidelines for state member banks generally require the deduction of investments in unconsolidated subsidiaries. The FRB may require an investment in unconsolidated subsidiaries, other than banking and finance subsidiaries or joint ventures and associated companies to be: (1) Deducted, (2) appropriately risk weighted against the proportionate share of the assets of the entity, or (3) consolidated with the entity. In addition, the FRB may require the parent organization to maintain capital above the minimum standard sufficient to compensate for any risks associated with the investment. The FRB risk-based capital guidelines also explicitly permit the FRB to require the deduction of investments in certain subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes.

The FDIC similarly requires the deduction of investments in certain types of securities subsidiaries of state-chartered nonmember banks that, while consolidated for accounting purposes, are not consolidated for regulatory capital purposes. Moreover, under the FDIC rules, investments in, and extensions of credit to, certain mortgage banking subsidiaries [7] are also deducted in computing the capital of the parent bank. Neither the OCC nor the FRB has a similar requirement with regard to mortgage banking subsidiaries.

The OTS risk-based capital guidelines make a distinction, mandated by FIRREA, between saving associations subsidiaries engaged in activities permissible for national banks and savings association subsidiaries engaged in activities impermissible for national banks. Similar to the treatment of subsidiaries by the Banking Agencies, subsidiaries of savings associations that engage only in activities permissible for national banks are either consolidated on a line-for-line basis, if majority-owned,[8] or on a *pro rata* basis using the equity method of accounting, if not. The OTS has retained the right to review a savings association's investment in a subsidiary on a case-by-case basis, regardless of the percentage of ownership held by the savings association.

Savings associations' investments in subsidiaries (which include loans to subsidiaries) that engage in national bank-impermissible activities, however, are deducted as a general rule in computing tangible and core capital of the parent association. The remaining assets (the percent of assets corresponding to the nondeducted portion of the investment in the subsidiary) are consolidated with the assets of the parent association.[9]

*4. Financial Subsidiaries*

The Gramm-Leach-Bliley Act (GLBA) authorizes national banks to conduct certain expanded financial activities through financial subsidiaries. Section 121(a) of the GLBA [10] imposes a number of conditions and requirements upon national banks that have financial subsidiaries, including specifying the treatment that applies for regulatory capital purposes. The statute requires that a national bank deduct from assets and tangible equity the aggregate amount of its equity investments (including retained earnings) in financial subsidiaries. The statute further requires that the financial subsidiary's assets and liabilities not be consolidated with those of the parent national bank. The OCC has issued regulations implementing these requirements, as well as the other requirements that GLBA imposes on national banks that have financial subsidiaries.[11]

State banks that establish financial subsidiaries are also subject to certain requirements. GLBA amends the Federal Deposit Insurance Act to provide that an insured state bank is, among other limitations, subject to the capital deduction and deconsolidation requirements that apply to a national bank if the state bank holds an interest in a subsidiary that is engaging as principal in activities that would only be permissible for a national bank to conduct through a financial subsidiary.[12] Under GLBA a state member bank that holds an interest in any financial subsidiary—whether conducting activities as principal or agent—must comply with all of the

[6] A ''significant majority-owned subsidiary'' is a subsidiary in which the investment by the parent bank represents a significant financial interest of the parent bank as evidenced by one or more of the following: (1) The bank's investment in or advances to the subsidiary equals 5 percent or more of the total equity capital of the bank; (2) the bank's proportional share of the gross income or revenue of the subsidiary equals 5 percent or more of the gross in come or revenue of the bank; (3) the income or loss (before taxes) of the subsidiary amount to 5 percent or more of the income or loss (before taxes) of the bank; or (4) the subsidiary is the parent of a subsidiary that is considered a significant subsidiary. *See* FFIEC, Instructions to the Consolidated Reports of Condition and Income, Glossary A–76a (3–99).

[7] The FDIC capital guidelines define finance subsidiaries as ''any company that is primarily engaged in banking or finance and in which the bank, either directly or indirectly, owns more than 50 percent of the outstanding voting stock but does not consolidate the company for regulatory capital purposes.'' 12 CFR part 325, Appendix A § I(B)(2) note 9.

[8] Instead of referring to an ownership interest of 50 percent or greater, the OTS regulation refers to ownership interests that would not be consolidated under generally accewpted accounting principles (GAAP). Because such ownership interests are generally majority investments, the reference to GAAP would not present a difference in treatment of subsidiaries of Federal savings associations as compared to subsidiaries of other federal banking agencies.

[9] There is one statutory exception to this rule on consolidation for subsidiaries engaging in national bank-impermissible activities. Investments in subsidiary insured depository institutions acquired before May 1, 1989, need not be deducted from the savings association's capital. Investments in such subsidiaries are permanently grandfathered by statute. *See* 12 U.S.C. 1464(t)(5)(C)(ii). A subsidiary insured depository institution is ''itself an insured depository institution or a company the sole investment of which is an insured depository institution.'' 12 U.S.C.. 1464(t)(5)(C)(ii)(I).

[10] GLBA, Pub. L. No. 106–102, § 121, 113 Stat. 1338–1373–81 (November 12, 1999) (codified at 12 U.S.C. 24a).

[11] *See* 65 FR 12905, 12906, 12915 (March 10, 2000) (OCC final rule) (capital deduction and deconsolidation requirements codified at 12 CFR 5.39(h)).

[12] *See* GLBA, § 121(d)(1) (capital deduction and deconsolidation requirement codified at 12 U.S.C. 1831w(a)(2)).

same conditions and limitations that apply to a national bank, including the capital deduction and deconsolidation requirement.[13] The FRB and the FDIC have each issued interim final rules that incorporate these requirements.[14] The GLBA did not provide new authority to savings associations to have financial subsidiaries, so it has not been necessary for the OTS to make similar changes to its regulations.

*5. Merchant Banking Activities*

The GLBA authorizes financial holding companies to acquire or control shares, assets, or ownership interests of any nonfinancial company as part of a *bona fide* underwriting, or merchant or investment banking activity.[15] The FRB has recently issued a proposed regulation that would apply a 50 percent capital charge at the holding company level, not only to investments made by bank holding companies pursuant to the new merchant banking investment authority, but also to investments made by holding companies—including bank subsidiaries—in small business investment companies (SBICs) pursuant to longstanding authority in the Small Business Investment Act.[16] The Banking Agencies currently apply an 8 percent capital charge to investments in SBICs. Adoption of the FRB regulation as proposed would therefore create a significant difference in the capital requirement that the FRB applies—through its supervision of financial holding company capital—to bank-level investments in SBICs and the capital requirement that the Banking Agencies apply to those same investments. The Agencies currently are discussing this issue in an effort to resolve the potential differences in capital requirements for SBIC investments.

*6. Mortgage-Backed Securities (MBS)*

The OCC risk-based capital guidelines generally assign a risk weight to privately issued MBSs according to the underlying assets, but in no case is a privately issued MBS assigned to the zero percent risk-weight category. Privately issued MBSs, where the direct underlying assets are mortgages, are generally assigned a risk weight of 50 percent or 100 percent. Privately issued MBSs that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk-weight category. The other Banking Agencies have similar rules.

Similarly, the OTS assigns privately issued MBSs backed by securities issued or guaranteed by government agencies or government-sponsored enterprises to the 20 percent risk-weight category. Unlike the Banking Agencies, however, the OTS also assigns certain privately-issued high quality mortgage-related securities with AA or better investment ratings to the 20 percent risk-weight category. Like the Banking Agencies, the OTS does not assign any privately issued MBS to the zero percent category.

*7. Nonresidential Construction and Land Loans*

Under the OCC risk-based capital guidelines, loans for real estate development and construction are assigned to the 100 percent risk-weight category. Reserves or charge-offs are required for such loans when weaknesses or losses develop. The OCC has no requirement for an automatic charge-off when the amount of a loan exceeds the fair value of the property pledged as collateral for the loan. The other Banking Agencies have similar rules.

OTS generally also assigns these loans to the 100 percent risk-weight category. If the amount of the loan exceeds 80 percent of the fair value of the property, however, savings associations must deduct the full amount of the excess portion from total capital.

*8. Pledged Deposits and Nonwithdrawable Accounts*

Pledged deposits and nonwithdrawable accounts that satisfy specified OTS criteria may be included in core capital by mutual savings associations. Pledged deposits and nonwithdrawable accounts generally represent capital investments in mutual saving associations under the same terms as perpetual noncumulative preferred stock. These mutual saving associations accept capital investments in the form of pledged deposits and nonwithdrawable accounts because mutual associations are not legally authorized to issue common or preferred stock. Income capital certificates and mutual capital certificates that were issued by savings associations under applicable statutory authority and regulations and held by the FDIC may be included in Tier 2 capital by savings associations.

These instruments are unique to savings associations organized in mutual form and are not held by commercial banks. Consequently, these instruments are not addressed in the OCC risk-based capital guidelines.

**C. Recent Interagency Amendments to Capital Rules**

The following describes the Agencies' most significant recent rulemaking projects.

*1. Unrealized Gains and Losses on Securities Available for Sale*

Under the Agencies' risk-based capital standards Tier 1 capital is defined to include common stockholders' equity, noncumulative preferred stock, and minority interests in the equity accounts of consolidated subsidiaries. Common stockholders' equity is further defined to include common stock, related surplus, and retained earnings (including capital reserves and adjustments for the cumulative effect of foreign currency translation), less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values.[17] Tier 2 capital is defined, subject to certain limitations and conditions, to include the allowance for loan and lease losses, cumulative perpetual preferred stock and related surplus, convertible preferred stock, and certain other subordinated debt and hybrid capital instruments.

The Basel Accord, however, also permits up to 45 percent of the gross (i.e., pretax) unrealized gains on equity securities to be included in Tier 2 capital. The 55 percent discount applies to the unrealized gains to reflect potential volatility of this form of unrealized capital, as well as the tax liability charges that might be incurred if the unrealized gain were realized or otherwise taxed currently.

On September 1, 1998, the Agencies issued a final rule authorizing this treatment for banks and thrifts. See 63 FR 46518 (September 1, 1998). Specifically, this rule permits institutions to include in Tier 2 capital up to 45 percent of the pretax net unrealized holding gains[18] on certain

[13] *Id.* at § 121(d)(2), amending 12 U.S.C. 335.

[14] *See* 65 FR 14810 (March 20, 2000) (FRB); 65 FR 15526 (March 23, 2000) (FDIC).

[15] GLBA § 103(a), 113 Stat. at 1344 (merchant banking authority codified at 12 U.S.C. 1843(k)(4)(H)).

[16] 65 FR 16480, 16481 (March 28, 2000).

[17] For regulatory capital purposes, institutions record net unrealized gains or losses on available-for-sale securities (debt and equity) in accordance with the Financial Accounting Standard (FAS) 115, which generally requires net unrealized gains and losses on securities available for sale to be included in capital. See Financial Accounting Standards Board, Statement of Financial Accounting Standards Number 115 (Accounting for Certain Investments in Debt and Equity Securities), No. 126–D (May 1993). The FFIEC adopted FAS 115 for regulatory reporting purposes beginning December 14, 1993.

[18] This is the excess amount of the fair value over historical cost as reported in the institution's most recent quarterly regulatory report (e.g., the Consolidated Report of Condition and Income (Call Report) for banks supervised by the OCC, the FRB,

available-for-sale equity securities. The equity securities must be valued in accordance with GAAP and have readily determinable fair values,[19] which the institutions should be able to substantiate. In the event an Agency determines that an institution's available-for-sale equity securities are not prudently valued, the institution may be precluded from including all or a portion of the eligible pretax net unrealized gains on those securities in Tier 2 capital.

*2. Servicing Assets*

On August 4, 1997, the Agencies issued a joint notice of proposed rulemaking with request for comment on the capital treatment of mortgage and non-mortgage servicing assets. See 62 FR 42006 (August 4, 1997). The Agencies issued the proposed rule in response to FAS 125, which became effective January 1, 1997. FAS 125 required the recording of servicing on all financial assets serviced for others, including loans other than mortgages. See Financial Accounting Standards Board, Statement of Financial Accounting Standards Number 125 (Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities). FAS 125 superseded FAS 122, which had eliminated the accounting distinction between originated mortgage servicing rights (OMSR) and purchased mortgage servicing rights (PMSR). See Financial Accounting Standards Board, Statement of Financial Accounting Standards Number 122 (Accounting for Mortgage Servicing Rights).

The Agencies proposed to increase the amount of mortgage servicing assets (MSAs) (consisting of both OMSRs and PMSRs) included in Tier 1 capital from 50 to 100 percent. The Agencies' proposal also included a requirement that MSAs continue to be subject to a 10 percent valuation discount which permits only the lesser of book value or 90 percent of fair market value to be included in Tier 1 capital. On August 10, 1998, the Agencies published a final rule adopting these and other changes to the risk-based capital treatment of servicing assets. *See* 63 FR 42668 (August 10, 1998).

*3. CDRI Act Section 303(a)(2) Capital Amendments*

As part of the interagency review of regulations undertaken pursuant to section 303(a)(2) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act),[20] the Agencies adopted joint final rules to eliminate differences in their rules in five areas: leverage capital requirements, construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, and mutual funds. *See* 64 FR 10194 (March 2, 1999). A review of the capital treatment of collateralized transactions was also proposed as part of the section 303(a)(2) CDRI Act review; however, this proposed rule was issued separately and is discussed in section D.2 of this report. *See* 1996 Report at I–6 to I–9.

a. Leverage Capital Requirements

The OCC, together with the Banking Agencies, adopted revisions to their leverage capital requirements to clarify that highly-rated institutions with a CAMELS[21] rating of 1 need only maintain a 3 percent minimum leverage ratio and that all other institutions must maintain a 4 percent minimum leverage ratio. In addition, the OTS amended its leverage capital standard to be consistent with the Banking Agencies by stating that higher-than-minimum capital levels may be required if warranted, and that institutions should maintain capital levels consistent with their risk exposures. *See* 64 FR 10194 (March 2, 1997).

b. Construction Loans on Presold Residential Properties

Under former OCC and OTS rules, loans to a builder to finance the construction of a presold 1- to 4-family residential property could not receive a 50 percent risk weight unless, prior to the extension of credit to the builder, the property was sold to an individual who would occupy the residence upon completion of the construction. In contrast, the Board and FDIC considered this type of construction loan to be eligible for a 50 percent risk weight once the property is sold, regardless of whether the institution made the loan to the builder before or after the individual purchased the residence from the builder.

To permit a uniform treatment of qualifying residential construction loans, the OCC and OTS revised its risk-based capital standards to adopt the Board and FDIC's treatment of these loans. The Agencies now uniformly permit qualifying residential construction loans to be eligible for the 50 percent risk weight category at the time the property is sold, regardless of when the institution made the loan to the builder. *See* 64 FR 10194 (March 2, 1997).

c. Junior Liens on 1- to 4-Family Properties

The Agencies have adopted a uniform risk-based capital treatment of real estate loans secured by junior liens on 1- to 4-family residential properties. The Agencies' former rules were not uniform in their treatment of these junior liens in instances where the lending institution held the first lien and no other party held an intervening lien. The OCC and OTS rules treated all first and junior liens separately, even if the lending institution held both liens and no party held an intervening lien, and risk weighted qualifying first liens which conform to prudent underwriting standards at 50 percent and non-qualifying first liens and all junior liens at 100 percent. In contrast, the FRB and FDIC rules treated the first and junior liens as a single loan secured by a first lien held by the lending institution, provided there were no intervening liens and assigned the combined loan amount to either the 50 percent or 100 percent risk-weight category depending on whether certain criteria are met.

Under the joint final rule, the Agencies adopted the Board's capital treatment of junior liens as the uniform interagency approach. This approach combines first and junior liens as a single exposure and risk weights the combined exposure at either 50 or 100

or the FDIC; the Thrift Financial Report (TFR) for thrift institutions supervised by the OTS; and the Y–9C Report for bank holding companies supervised by the FRB).

[19] The Agencies intend to rely on the guidance set forth in FAS 115 for purposes of determining whether equity securities have fair values that are ''readily determinable.''

[20] Pub. L. No. 103–325, § 303, 108 Stat. 2160, 2215 (1994) (codified at 12 U.S.C. 4803). Section 303(a)(2) required that the Agencies ''work jointly * * * to make uniform all regulations and guidelines implementing common statutory or supervisory policies.'' *See also* Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Office of Thrift Supervision, Joint Report: Streamlining of Regulatory Requirements (September 23, 1996) (report submitted by the Agencies to the Congress pursuant to section 303(a)(3) of the CDRI Act; referred to hereafter as the 1996 Report), updated by Joint Report: Update on Review of Regulations and Paperwork Reductions (Section 402 of the Credit Union Membership Access Act) (August 5, 1999).

[21] On December 9, 1996, the Federal Financial Institutions Examination Council (FFIEC) adopted revisions to the Uniform Financial Institutions Rating System (UFIRS). The UFIRS is used by federal and state banking regulators for assessing the soundness of financial institutions on a uniform basis and for identifying those insured institutions requiring special supervisory attention. The condition of each institution is reflected in the ''CAMELS'' rating, which provides a measure of a bank's Capital, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to market risk. *See* 61 FR 67021 (December 19, 1996).

percent, as appropriate, taking into account the loan-to-value ratio of the combined exposure. To qualify for the 50 percent risk category, the combined loan must be made in accordance with prudent underwriting standards, including an appropriate LTV ratio.[22] In addition, none of the combined loans may be 90 days or more past due, or be in nonaccrual status. Loans that do not meet all of these criteria must be assigned in their entirety to the 100 percent risk category. *See* 64 FR 10194 (March 2, 1997).

d. Mutual Funds

The Agencies have adopted a uniform treatment of an institution's investment in a mutual fund. Under this uniform approach, the Agencies generally assign an institution's total investment in a mutual fund to the risk category appropriate to the highest risk-weighted asset the fund may hold in accordance with its stated investment limits set forth in its prospectus. Alternatively, institutions also have the option of assigning the investment on a pro rata basis to different risk categories according to the investment limits in the fund's prospectus.

Regardless of the risk-weighting method used, the minimum risk weight that may be assigned to such a pool is 20 percent. If an institution assigns the asset on a pro rata basis, and the sum of the investment limits in the fund's prospectus exceeds 100 percent, the institution must assign the highest pro rata amounts of its total investment to the highest risk category. In addition, if a mutual fund is permitted to hold an immaterial amount of highly liquid, high quality securities that do not qualify for a preferential risk weight, then those securities may be disregarded in determining the fund's risk weight. However, if a fund engages in any activities that are deemed to be speculative in nature or has any other characteristics that are inconsistent with the preferential risk-weighting assigned to the fund's assets, the institution's investment in the fund will be assigned to the 100 percent risk-weight category. *See* 64 FR 10194 (March 2, 1997).

[22] Prudent underwriting standards include an appropriate ratio of the loan balance to the value of the property. A loan secured by a one- to four-family residential property is considered prudently underwritten if the loan complies with the Interagency Guidelines for Real Estate Lending. *See, e.g.*, 12 CFR part 34, subpart D (OCC).

**D. Recent Interagency Proposals**

*1. Recourse*[23] *and Direct Credit Substitutes*

As a result of the adoption of GAAP as the reporting basis for Uniform Reports of Condition and Income (Call Reports) in 1997, banks now may remove assets transferred with recourse from their balance sheets if the transfers qualify for sale treatment under GAAP.[24] Prior to the adoption of GAAP, the Banking Agencies' regulatory accounting principles (RAP) precluded banks from removing assets sold with recourse from the bank's balance sheet, thereby requiring them to maintain leverage capital against assets sold with recourse.

The OTS capital rules, however, had previously enabled thrifts to remove assets sold with recourse from their balance sheets when such transactions qualify as sales under GAAP. Consequently, thrifts have not had to hold leverage capital against assets sold with recourse. The Banking Agencies' adoption of GAAP has resolved this difference in the capital treatment of sales with recourse. The Agencies' current risk-based capital guidelines prescribe a single treatment for most assets transferred with recourse, regardless of whether the transaction is reported under GAAP as a financing or a sale of assets.

Direct credit substitutes are arrangements in which an institution assumes the risk of credit loss from assets that it did not originate. The Banking Agencies' current capital rules treat direct credit substitutes and recourse differently.[25] The OTS, however, treats some direct credit substitutes, such as purchased-subordinated interests, under its general recourse provisions and others, such as financial guarantee-type letters of credits, differently than recourse.

On November 5, 1997 and again on March 8, 2000, the Agencies issued proposed rules on the regulatory capital treatment of recourse obligations and direct credit substitutes. The proposed rules would treat direct credit substitutes and recourse obligations consistently and would use credit ratings to match the risk-based capital assessment more closely to a banking organization's relative retention or assumption of credit risk in asset securitizations. *See* 62 FR 59944 (November 5, 1997) and 65 FR 12320 (March 8, 2000). The March 2000 proposed rule also would assess a capital surcharge against banks that sponsor revolving securitizations (*i.e.* credit card securitizations) that contain early amortization features.[26]

*2. Collateralized Transactions*

The Agencies currently have different rules on the risk weighting of collateralized transactions. Both the OCC and FRB permit certain loans and transactions collateralized by cash and government securities of the Organization for Economic Cooperation and Development (OECD) to qualify for a zero percent risk weight. The FDIC and OTS risk weight loans and transactions collateralized by cash and OECD government securities at 20 percent.

To ensure uniform treatment of collateralized transactions, the Agencies are considering revisions to their capital rules. The FDIC and OTS have proposed to adopt a collateralized transactions rule lowering the risk weight from 20 percent to zero percent on certain loans and transactions collateralized by cash or government securities, while the OCC and FRB propose to revise their current collateralized transactions rule to use more uniform language. *See* 61 FR 42565 (August 16, 1996).

*3. Residual Interests*

On September 27, 2000, the Agencies issued a proposed rule to amend the regulatory capital treatment of certain residual interests created in asset securitizations or other transfers of financial assets. The proposed rule is

[23] Section 208 of the CDRI Act (12 U.S.C. 1835) prescribes modified risk-based capital requirements for transfers of small business loans or leases of personal property with recourse that are sales under GAAP. This modified risk-based capital treatment generally reduces the amount of capital required to be held by certain qualified institutions for recourse retained in certain transfers of small business loans and leases of personal property. Specifically, section 208 permits such qualified institutions to include in its risk-weighted assets only the amount of the retained recourse, not the full value of assets transferred with recourse, multiplied by the appropriate risk-weight percentage. The Agencies have issued final rules implementing section 208. *See* 60 FR 45612 (August 31, 1995) (FRB final rule); *see also* 62 FR 55490 (October 24, 1997) (OCC, FDIC, and OTS joint final rule).

[24] In their Call Report instructions, the Agencies define recourse as the risk of credit loss an institution retains when it sells an asset.

[25] When an asset is transferred with recourse, risk-based capital must be held against the full amount of the transferred asset (not just the amount of the recourse), subject to the low-level recourse rule. 12 U.S.C. 4808(b)(1). The low-level recourse rule limits the maximum risk-based capital requirement to the bank's maximum contractual obligation. A bank that provides an equivalent direct credit substitute, in contrast, must hold capital only against the face amount of the direct credit substitute.

[26] An early amortization feature requires the sponsor of a securitization to accelerate the paydown of senior securities in a securitization upon the occurrence of triggering events, such as a certain number of defaults or prepayments.

intended to better align regulatory capital requirements with the risk exposure of residual interests, to encourage conservative valuation methods, and to restrict excessive concentrations in these assets. Residual interest are defined to include retained on-balance sheet residual interests, created through the sale of assets, that absorb more than a pro rata share of credit loss through subordination provisions or other credit enhancement techniques. Residual interests, as defined, would include subordinated security interests, cash collateral accounts, interest-only strips, and any other on-balance sheet assets that serve as credit enhancements. The definition of residual interests would exclude those residual interests that do not serve as credit enhancements as well as residual interests purchased by a third party.

The proposed rule would (1) require dollar-for-dollar capital charge against the value of residual interests, even if the amount of capital exceeded the capital charge for the underlying assets supported by the residuals (in effect removing the cap imposed by the low level recourse rule) and (2) include residual interests within the 25 percent of Tier 1 capital sublimit already established for non-mortgage servicing assets and purchased credit card relationships. Any amounts above the sublimit would be deducted from Tier 1 capital. Any residual interests excluded in determining the Tier 1 capital numerator for the leverage and risk-based capital ratios would also be excluded from the denominators of these ratios to avoid double counting. *See* 65 FR 57993 (September 27, 2000).

*4. Simplified Capital Framework for Non-Complex Institutions*

The Agencies have published an advance notice of proposed rulemaking (ANPR) on a simplified regulatory capital framework for non-complex banking institutions. *See* 65 FR 66193 (November 3, 2000). Currently, banks and thrifts are required to maintain minimum levels of risk-based capital under a framework established by the Basel Accord. However, the Agencies believe that the size, complexity, and risk profile of many banking institutions may warrant the application of a simplified capital framework that could reduce the regulatory burden associated with existing capital standards (or any future modification of those standards). Under such a framework, banks deemed non-complex would be subject to simplified capital requirements.

The ANPR describes non-complex banks as being relatively small in terms of asset size and operations, possessing a relatively simple balance sheet, being principally engaged in traditional banking activities, and not having significant off-balance-sheet exposures. It is also noted that such banks generally have regulatory capital far in excess of the required minimums. The ANPR suggests that in order to be eligible for the non-complex framework a bank should maintain a level of capital sufficiently high such that more precise risk-based measures are not necessary.

The ANPR considers the potential for using the nature of a bank's activities, its asset size, and its risk profile as determinants of eligibility for the simplified regulatory capital framework. Three options for setting minimum regulatory capital requirements for non-complex banks are presented: (1) A risk-based ratio, (2) a simple leverage ratio, and (3) a modified leverage ratio that incorporates certain off-balance-sheet exposures.

*5. Securities Borrowing Transactions*

The banking agencies have issued an interim rule that revises the market risk capital treatment for certain securities borrowing transactions. See 65 FR 75856 (December 5, 2000). Specifically, the interim rule generally would lower the capital requirements for certain qualifying securities borrowing transactions by permitting the collateralized portion of the securities borrowing transaction to be subject to the market risk capital requirements instead of the risk-based capital requirements. In order to qualify for the lower market risk capital requirement under this joint interim rule, a bank must be subject to the market risk capital requirements and the securities borrowing transaction must result in a receivable that arises from the posting of the cash collateral. Only the portion of the receivable collateralized by the market value of the securities borrowed qualifies for the lower market risk capital requirement; uncollateralized portions must continue to be risk weighted under the risk-based capital guidelines. Moreover, the interim rule only applies to securities borrowing transactions collateralized by cash—securities borrowing transactions collateralized by securities must continue to be risk-weighted according to the securities posted as collateral. In addition, the securities borrowing transaction must satisfy other prudential requirements, including the conditions that the borrowed securities must be marked-to-market daily and the cash collateral must be subject to a daily margin maintenance requirement.

In a typical securities borrowing transaction, a bank will borrow securities from a securities lender and will post collateral in the form of cash or highly marketable securities with the securities lender in an amount that fully covers the value of the securities borrowed plus an additional margin. If cash is posted as collateral, generally accepted accounting principles require the cash to be treated as a loan from the bank to the securities lender. Under the current capital guidelines, the securities borrower must hold capital against the full amount of the loan which would be the standard 100 percent risk weight for nonbank securities lenders. If the collateral is in the form of securities, the risk-based capital charge is based on the capital charge that would be imposed on the securities posted as collateral. The borrowed securities are generally treated as an off-balance sheet item that does not require capital. The banking agencies believe that current capital requirement is inordinately high given the actual risks associated with securities borrowing transactions that are collateralized by cash. The current capital treatment fails to recognize that the bank holding the borrowed securities is at risk only for the amount of the cash collateral posted that exceeds the value of the securities it holds. Moreover, the current capital requirement is inconsistent with the capital requirements imposed by other U.S. and foreign regulators for the same transactions.

**E. Interagency Differences in Accounting Principles**

The Banking Agencies, under the auspices of the FFIEC, developed Call Reports setting forth the regulatory reporting standards for all commercial banks and FDIC supervised savings banks. In the past, the Call Reports were mostly consistent with GAAP. The instructions to the Call Report required banks to follow GAAP for reports of condition and income filed with the Banking Agencies, except as permitted under section 121 of FDICIA. Section 121 of FDICIA requires financial institutions to use accounting principles ''no less stringent than [GAAP].'' 12 U.S.C. 1831n(a)(2)(B). Although the accounting and reporting requirements imposed by the Banking Agencies were already mostly consistent with GAAP, effective March 1997, the Banking Agencies fully adopted GAAP as the reporting basis for the Call Report.

The OTS requires each savings association to file the Thrift Financial Report. That report requires savings associations to prepare all financial statements included in the report on a

basis fully consistent with GAAP. Accordingly, the Banking Agencies' adoption of GAAP for Call Report purposes in 1997 has eliminated the significant differences in regulatory reporting standards between the Agencies.[27]

Dated: December 6, 2000.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

[FR Doc. 01–2958 Filed 2–2–01; 8:45 am]

**BILLING CODE 4810–33–P**

[27] Differences in reporting standards between the banking agencies and the OTS were eliminated in 1997 in the following areas: sales of assets with recourse, futures and forward contracts, excess servicing fees, offsetting of assets and liabilities, and in-substance defeasance of debt.

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Submission for OMB Review; Comment Request

January 30, 2001.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**DATES:** Submit written comments on or before March 7, 2001.

*OMB Number:* 1550–0019.

*Form Number:* SEC Schedules 13D, 13G, 14A, 14C, 14D–1, and TO; SEC Forms 10, 10–SB, 10–K, 10–KSB, 8, 8–K, 8–A, 12b–25, 10–Q, 10–QSB, 15, 3, 4, 5, and Annual Report.

*Type of Review:* Regular.

*Title:* '34 Act Disclosures.

*Description:* OTS collects periodic disclosure documents required to be filed by savings associations pursuant to the Securities Exchange Act of 1934 on forms promulgated by the U.S. Securities and Exchange Commission for its registrants.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Responses:* 28.

*Estimated Burden Hours Per Response:* 3,410 hours.

*Frequency of Response:* Quarterly, Annually, and as required.

*Estimated Total Reporting Burden:* 95,467 hours.

*Clearance Officer:* Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**John E. Werner,**

*Director, Information & Management Services.*

[FR Doc. 01–2917 Filed 2–2–01; 8:45 am]

**BILLING CODE 6720–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Submission for OMB Review; Comment Request

January 30, 2001.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**DATES:** Submit written comments on or before March 7, 2001.

*OMB Number:* 1550–0035.

*Form Number:* SEC Forms S–4, S–8, SB–1, SB–2 and OTS Forms PS, OC and G–12.

*Type of Review:* Regular.

*Title:* Securities Offerings Disclosure.

*Description:* OTS collects information for disclosure in securities offerings by savings associations related directly to U.S. Securities and Exchange Commission requirements for offering of information to potential securities purchasers.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Responses:* 38.

*Estimated Burden Hours Per Response:* 379 hours.

*Frequency of Response:* Once per filing.

*Estimated Total Reporting Burden:* 14,402 hours.

*Clearance Officer:* Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**John E. Werner,**

*Director, Information & Management Services.*

[FR Doc. 01–2918 Filed 2–2–01; 8:45 am]

**BILLING CODE 6720–01–P**

Federal Register

Monday,
February 5, 2001

# Part II

# Securities and Exchange Commission

## 17 CFR Parts 230, 239, 270, and 274
## Disclosure of Mutual Fund After-Tax Returns; Final Rule

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 230, 239, 270, and 274

**[Release Nos. 33–7941; 34–43857; IC–24832; File No. S7–09–00]**

**RIN 3235–AH77**

## Disclosure of Mutual Fund After-Tax Returns

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is adopting rule and form amendments under the Securities Act of 1933 and the Investment Company Act of 1940 to improve disclosure to investors of the effect of taxes on the performance of open-end management investment companies (''mutual funds'' or ''funds''). These amendments require mutual funds to disclose in their prospectuses after-tax returns based on standardized formulas comparable to the formula currently used to calculate before-tax average annual total returns. The amendments also require certain funds to include standardized after-tax returns in advertisements and other sales materials. Disclosure of standardized mutual fund after-tax returns will help investors to understand the magnitude of tax costs and compare the impact of taxes on the performance of different funds.

**EFFECTIVE DATE:** April 16, 2001. Section II. J. of this document contains information on compliance dates.

**FOR FURTHER INFORMATION CONTACT:** Vincent J. Di Stefano, Senior Counsel, Peter M. Hong, Special Counsel, Martha B. Peterson, Special Counsel, or Kimberly Dopkin Rasevic, Assistant Director, (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549–0506.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (''Commission'') is adopting amendments to Form N–1A (17 CFR 239.15A and 274.11A), the registration form used by mutual funds to register under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'' or ''Act'') and to offer their shares under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act''). The Commission also is adopting amendments to rule 482 under the Securities Act [17 CFR 230.482] and rule 34b–1 under the Investment Company Act (17 CFR 270.34b–1).

**Table of Contents**

I. Introduction
II. Discussion
A. Required Disclosure of After-Tax Returns
B. Types of Return to Be Disclosed
C. Location of Required Disclosure
D. Format of Disclosure
E. Exemptions from the Disclosure Requirement
F. Advertisements and Other Sales Literature
G. Formulas for Computing After-Tax Return
1. Tax Bracket
2. Capital Gains and Losses Upon a Sale of Fund Shares
3. Other Assumptions
H. Narrative Disclosure
I. Technical and Conforming Amendments
J. Effective Date; Compliance Dates
1. Effective Date
2. Compliance Date for Prospectuses
3. Compliance Date for Advertisements and Other Sales Materials
III. Cost/Benefit Analysis
A. Benefits
B. Costs
IV. Effects on Efficiency, Competition, and Capital Formation
V. Summary of Final Regulatory Flexibility Analysis
A. Need for the Rule and Form Amendments
B. Significant Issues Raised by Public Comment
C. Small Entities Subject to the Rule
D. Projected Reporting, Recordkeeping, and Other Compliance Requirements
E. Agency Action to Minimize Effects on Small Entities
VI. Paperwork Reduction Act
VII. Statutory Authority
Text of Rules and Forms

## I. Introduction

We are adopting rule and form amendments that require a mutual fund to disclose after-tax returns.[1] Taxes are one of the most significant costs of investing in mutual funds through taxable accounts. In 1999, mutual funds distributed approximately $238 billion in capital gains and $159 billion in taxable dividends.[2] Shareholders investing in stock and bond funds paid an estimated $39 billion in taxes in 1998 on distributions by their funds.[3] Recent estimates suggest that more than two and one-half percentage points of the average stock fund's total return is lost each year to taxes.[4] Moreover, it is estimated that, between 1994 and 1999, investors in diversified U.S. stock funds surrendered an average of 15 percent of their annual gains to taxes.[5]

Despite the tax dollars at stake, many investors lack a clear understanding of the impact of taxes on their mutual fund investments.[6] Generally, a mutual fund shareholder is taxed when he or she receives income or capital gains distributions from the fund and when the shareholder redeems fund shares at a gain.[7] The tax consequences of distributions are a particular source of surprise to many investors when they discover that they can owe substantial taxes on their mutual fund investments that appear to be unrelated to the performance of the fund. Even if the value of a fund has declined during the year, a shareholder can owe taxes on capital gains distributions if the portfolio manager sold some of the fund's underlying portfolio securities at a gain.[8]

[1] *See* Disclosure of Mutual Fund After-Tax Returns, Investment Company Act Release No. 24339 (Mar. 15, 2000) (65 FR 15500 (Mar. 22, 2000)) (''Proposing Release'').

[2] Investment Company Institute (''ICI''), Mutual Fund Fact Book 56 (2000) (''2000 Mutual Fund Fact Book'') (distributions of taxable dividends included $95.6 billion on equity, hybrid, and bond funds and $63.1 billion on money market funds).

[3] Liberty Funds Distributor News Release, *Liberty Announces Annual Mutual Fund Tax Pain Index* (Apr. 12, 2000) http://www.libertyfunds.com/liberty/lf/scripts/ libertyNews.jsp?action=PressReleasesTaxPain&BV_SessionID=@@@@1948593995.0976289726@@@@&BV_EngineID=caljiehhgegbfdmckgcfjicil.0 (estimate of the tax burden based on net capital gains realized on mutual funds other than money market funds, and net investment income on equity, bond, and income funds).

[4] KPMG Peat Marwick LLP, An Educational Analysis of Tax-Managed Mutual Funds and the Taxable Investor (''KPMG Study''), at 14.

[5] Jonathan Clements, *Fund Distributions are a Taxing Problem; How the Tax Man Dines on Your Funds,* The Wall Street Journal, Aug. 31, 1999, at C1.

[6] In a recent telephone survey, 1,000 mutual fund investors were asked about their tax knowledge. Eighty-five percent of respondents claimed taxes play an important role in investment decisions, but only thirty-three percent felt that they were very knowledgeable about the tax implications of investing. Eighty-two percent were unable to identify the maximum rate for long-term capital gains. The Dreyfus Corporation, *Dreyfus' 1999 Tax Informed Investing Study* (visited Jan. 2, 2001) http://www.dreyfus.com/.

[7] I.R.C. 61(a)(3) and (7) (providing that an individual's gross income includes dividends and gains derived from dealings in property); I.R.C. 852(b)(3)(8) (capital gain dividend from a mutual fund treated as gain from sale or exchange of capital asset held for more than one year); I.R.C. 1001 (gain from sale or other disposition of property is excess of amount realized over adjusted basis, and loss is excess of the adjusted basis over amount realized). *See* IRS Publication 564, *Mutual Fund Distributions* (2000), at 2–4 (explaining tax treatment of distributions of income and capital gains by mutual funds to their shareholders).

[8] This is attributable, in part, to the fact that a mutual fund generally must distribute substantially all of its net investment income and realized capital gains to its shareholders in order to qualify for favorable tax treatment as a ''regulated investment company'' (''RIC''). I.R.C. 852 and 4982(b). As a RIC, a mutual fund is generally entitled to deduct dividends paid to shareholders, resulting in its shareholders being subject to only one level of taxation on the income and gains distributed to them. I.R.C. 851 (circumstances under which an investment company may be treated as a RIC) and 852(b)(2) (calculation of taxable income of a RIC).

The tax impact of mutual funds on investors can vary significantly from fund to fund. For example, the amount and character of a fund's taxable distributions are affected by its investment strategies, including the extent of a fund's investments in securities that generate dividend and other current income, the rate of portfolio turnover and the extent to which portfolio trading results in realized gains, and the degree to which portfolio losses are used to offset realized gains. One recent study reported that the annual impact of taxes on the performance of stock funds varied from zero, for the most tax-efficient funds, to 5.6 percentage points, for the least tax-efficient.[9] While the tax-efficiency of a mutual fund is of little consequence to investors in 401(k) plans or other tax-deferred vehicles, it can be very important to an investor in a taxable account, particularly a long-term investor whose tax position may be significantly enhanced by minimizing current distributions of income and capital gains.

Recently, there have been increasing calls for improvement in the disclosure of the tax consequences of mutual fund investments. Mutual funds, as well as third party providers that furnish information to mutual fund shareholders, are responding to this growing investor demand by providing after-tax returns, calculators that investors can use to compute after-tax returns, and other tax information.[10] In addition, several fund groups have created new funds promoting the use of more tax-efficient portfolio management strategies.[11] Moreover, in April 2000, a bill that would require the Commission to revise its regulations to require improved disclosure of mutual fund after-tax returns was passed by the U.S. House of Representatives and referred to the Senate.[12] Many press commenters also have highlighted the need for improvements in mutual fund tax disclosure.[13]

Currently, the Commission requires mutual funds to disclose significant information about taxes to investors.[14] While we believe that this disclosure is useful, we are persuaded that funds can more effectively communicate to investors the tax consequences of investing. As a result, last March we proposed for public comment amendments to our rules and to Form N–1A, the registration form for mutual funds, that would require disclosure of standardized mutual fund after-tax returns.[15]

Today we adopt rule and form amendments that require a fund to disclose its standardized after-tax returns for 1-, 5-, and 10-year periods. After-tax returns, which will accompany before-tax returns in fund prospectuses, will be presented in two ways: (i) After taxes on fund distributions only; and (ii) after taxes on fund distributions and a redemption of fund shares. Although after-tax returns will not generally be required in fund advertisements and sales literature, any fund that either includes after-tax returns in these materials or includes other performance information together with representations that the fund is managed to limit taxes will be required to include after-tax returns computed according to our standardized formulas.

While the Commission recognizes that a significant amount of mutual fund assets are held through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts (''IRAs''), almost forty percent of non-money market fund assets held by individuals are held in taxable accounts.[16] We are concerned that the millions of mutual fund investors who are subject to current taxation may not fully appreciate the impact of taxes on their fund investments because mutual funds are required to report their performance on a before-tax basis only.[17] Although performance is only one of many factors that an investor should consider in deciding whether to invest in a particular fund, many investors consider performance one of the most significant factors when

*See, e.g., Year-End Tax Tips*, Bob Edwards (National Public Radio, Morning Edition radio broadcast, Dec. 28, 1999) (describing tax consequences of mutual fund distributions as a ''shock'' to investors).

[9] KPMG study, *supra* note 4, at 14 (reporting the impact of taxes on performance of 496 stock funds for the ten-year period ending December 31, 1997).

[10] For example, Eaton Vance Management reports after-tax returns and tax-efficiency ratios for certain of its tax-managed funds on its website. Eaton Vance, *Eaton Vance Mutual Funds* (visited December 19, 2000) http://www.eatonvance.com/mutual_funds/mutualfunds_A.asp. Online tax calculators are also available. The Vanguard Group, *After-Tax Returns Calculator* (visited December 19, 2000) http://majestic5.vanguard.com/FP/DA/0.1.vgi_FundAfterTaxSim/079190348019134650?AFTER_TAX_CALC=SIMPLE (calculator that can be used to calculate after-tax returns for Vanguard funds); *Andrew Tobias' Mutual Fund Cost Calculator* (visited Dec. 22, 2000) http://www.personalfund.com/cgi-bin/cost.cgi?ticker=TWLBX (cost calculator includes a feature that calculates after-tax returns). Fidelity Investments and Charles Schwab & Co. offer Internet tools that feature after-tax returns of funds offered in their fund supermarkets. *E.g.,* Fidelity Investments, *Fidelity Funds* (visited December 19, 2000) http://personal100.fidelity.com/gen/mflfid/0/316145200.html; About Schwab, *Schwab Introduces New On-line Mutual Fund Selection and Screener Tools,* Dec. 22, 1999 (visited Dec. 19, 2000) http://www.prnewswire.com/cgi-bin/micro_stories.pl?ACCT=154881&TICK=SCH&STORY=/www/story/12–22–1999/0001102424&E DATE=Dec+22,+1999. Further, Morningstar, Inc., and *Forbes* report mutual fund after-tax returns. Morningstar, Mutual Fund 500 (2000 ed.); *Fund Survey,* Forbes, Feb. 7, 2000, at 166.

[11] The fund groups offering funds labeled as ''tax-managed,'' ''tax-efficient,'' ''tax-sensitive,'' or ''tax-aware'' include 59 Wall Street, American Century, Bernstein, Delaware Investments, DFA Investment Dimensions, Dresdner RCM Global Investors, Dreyfus, Eaton Vance, Evergreen, Fidelity, GMO, Golden Oak, ING, J.P. Morgan, Liberty Financial Funds, PaineWebber, PIMCO, Prudential, Putnam, Russell, Standish Ayer & Wood, STI Classic, SunAmerica, T. Rowe Price, USAA, and Vanguard. Morningstar, Inc., currently tracks 59 tax-managed funds, as compared to 12 such funds only four years ago. Morningstar, Principia Pro Plus (Dec. 2000) (reporting as of Nov. 30, 2000).

[12] The Mutual Fund Tax Awareness Act of 2000, H. R. 1089, 106th Cong., 2nd Sess. (2000) (introduced by Congressman Paul Gillmor, passed by the House, as amended, on Apr. 3, 2000, by a vote of 358 to 2, and referred to the Senate on Apr. 4, 2000.). *See also* H.R. 1089: The Mutual Fund Tax Awareness Act of 1999: Hearings Before the Subcomm. on Finance and Hazardous Materials of the House Comm. on Commerce, 106th Cong., 1st Sess. (Oct. 29, 1999) (Statement of the U.S. Securities and Exchange Commission Concerning Disclosure of the Tax Consequences of Mutual Fund Investments and Charitable Contributions).

[13] *See, e.g.,* Fred Barbash, *Facts Might Confuse Us? Excuse Me?,* The Washington Post, Nov. 19, 2000, at H1; Karen Damato, *Funds' Tally of IRS Bite Can Be Tricky,* The Wall Street Journal, Nov. 3, 1999, at C1; Paul J. Lim, *Your Money; Funds and 401(k)s; As Stock Market Returns Shrink, After-Tax Results Gain Importance,* Los Angeles Times, Oct. 17, 1999, at C3; Charles A. Jaffe, *Mutual Fund Gains Create Interesting Tax Issues Later,* The Kansas City Star, Mar. 23, 1999, at D19.

[14] In its prospectus, a mutual fund is required to disclose (i) the tax consequences of buying, holding, exchanging, and selling fund shares, including the tax consequences of fund distributions; and (ii) whether the fund may engage in active and frequent portfolio trading to achieve its principal investment strategies, and, if so, the tax consequences of increased portfolio turnover and how this may affect fund performance. Item 7(e) of Form N–1A; Instruction 7 to Item 4 of Form N–1A. A fund also must disclose in its prospectus and annual report the portfolio turnover rate and dividends and capital gains distributions per share for each of the last five fiscal years. Items 9(a) and 22(b)(2) of Form N–1A. These items also require funds to show net realized and unrealized gain or loss on investments on a per share basis for each of the fund's last five fiscal years.

[15] Proposing Release, *supra* note 1.

[16] As of year end 1999, eighty-one percent of mutual fund assets ($5.5 trillion) were held by individuals. 2000 Mutual Fund Fact Book, *supra* note 2, at 41. At the end of 1999, mutual fund assets held in retirement accounts stood at $2.5 trillion. 2000 Mutual Fund Fact Book, at 49. Mutual fund assets held by individuals in money market funds stood at $885 billion. 2000 Mutual Fund Fact Book, at 103. Thus, almost 40 percent of non-money market fund assets held by individuals ($2.1 trillion) were held in taxable accounts.

An investor is not taxed on his or her investments in IRAs, 401(k) plans, and other qualified retirement plans until the investor receives a distribution from the plan. I.R.C. 401 *et seq. See* IRS Publication 564, *Mutual Fund Distributions* (1999), at 2 (explaining tax treatment of mutual funds held in retirement vehicles).

[17] *See* Items 2, 5, 9, and 22(b)(2) of Form N–1A.

selecting or evaluating a fund.[18] As a result, we believe it would be beneficial for funds to provide their after-tax performance in order to allow investors to make better-informed decisions.

This is the latest Commission action in our continuing effort to improve fund disclosure of costs. Since 1988, we have required mutual funds to include a uniform fee table in the prospectus.[19] More recently, we have increased our efforts to educate investors about mutual fund costs and how those costs affect performance.[20] In 1999, we introduced a ''Mutual Fund Cost Calculator'' to assist investors in determining how fund fees and charges affect their mutual fund returns.[21] Moreover, we are currently considering recommendations made in separate reports by the United States General Accounting Office and the Commission's Division of Investment Management on ways to improve fund disclosure of fees and costs.[22]

The amendments we adopt today represent another significant step in these efforts. Taxes are one of the largest costs associated with a mutual fund investment, having a dramatic impact on the return an investor realizes from a fund. Disclosure of standardized mutual fund after-tax returns will help investors to understand the magnitude of tax costs and compare the impact of taxes on the performance of different funds.

## II. Discussion

The Commission received 235 letters commenting on the Proposing Release.[23] One hundred ninety-five of the letters were from individual investors or investor advocacy groups. The individual investors and investor advocacy groups overwhelmingly supported the Commission's proposal to require disclosure of after-tax returns. The remaining 40 letters were from industry participants, who were divided in their views. Many generally supported the proposal, while expressing concerns regarding specific disclosure requirements. Others opposed the proposal. Many commenters offered recommendations for improving portions of the proposal. The Commission is adopting the proposed rule and form amendments with the modifications described below that address commenters' concerns.

### *A. Required Disclosure of After-Tax Returns*

The Commission is adopting, with modifications, the requirement that mutual funds disclose after-tax return, a measure of a fund's performance adjusted to reflect taxes that would be paid by an investor in the fund. As discussed more fully below, funds will be required to include after-tax return information in the risk/return summary of the prospectus.[24] Funds will not generally be required to include after-tax returns in advertisements or other sales materials. Funds will, however, be required to include after-tax returns computed according to a standardized formula in sales materials that either include after-tax returns or include any other performance information together with representations that the fund is managed to limit taxes.[25]

Individual commenters overwhelmingly supported the required disclosure of after-tax returns. Many of these individuals stated that after-tax returns would help them compare funds and make better-informed investment decisions. Industry comments, however, were mixed regarding whether funds should be required to disclose this information. Industry commenters supporting after-tax return disclosure noted that the disclosure would give investors a clearer understanding of fund performance and assist them in evaluating the impact of taxes on the performance of various funds. Industry commenters opposing after-tax return disclosure argued, among other things, that the disclosure would overwhelm investors, be irrelevant to investors in tax-deferred accounts such as 401(k) plans, be inaccurate because the returns are not tailored to individual investors' specific tax situation, place funds at a competitive disadvantage, and be unduly burdensome to compute. A few of these commenters suggested that, instead of requiring the disclosure of after-tax returns, the Commission should encourage the development of web-based personalized after-tax return calculators.

After careful consideration of these comments, we continue to believe that requiring funds to provide standardized after-tax returns will be beneficial to investors, allowing them to make better-informed investment decisions. We believe that after-tax return disclosure is useful to, and understandable by, investors, as evidenced by the overwhelming support of individual commenters. Moreover, in recognition of the fact that after-tax returns would not be relevant for investors who hold fund shares through tax-deferred arrangements, we are requiring that after-tax returns be accompanied by narrative disclosure to that effect, and we are exempting prospectuses used exclusively to offer fund shares as investment options for tax-deferred arrangements from the after-tax return disclosure requirement.[26]

We recognize that the computation of after-tax return depends on assumed tax rates, which vary from investor to investor. Standardized after-tax returns will, however, serve as useful guides to

[18] Last year, we posted a bulletin for mutual fund investors on our website, in which we cautioned investors to look beyond performance when evaluating mutual funds and to consider the costs relating to a mutual fund investment, including fees, expenses, and the impact of taxes on their investment. Securities and Exchange Commission, *Mutual Fund Investing: Look at More Than a Fund's Past Performance* (last modified Jan. 24, 2000) http://www.sec.gov/consumer/mperf.htm/.

*See* ICI, *Understanding Shareholders' Use of Information and Advisers* (Spring 1997), at 21 and 24 (Total return information was frequently considered by investors before a purchase, second only to the level of risk of the fund. Eighty-eight percent of fund investors surveyed said that they considered total return before their most recent purchase of a mutual fund. Eighty percent of fund owners surveyed reported that they followed a fund's rate of return at least four times per year.).

[19] Item 3 of Form N–1A; Consolidated Disclosure of Mutual Fund Expenses, Investment Company Act Release No. 16244 (Feb. 1, 1988) (53 FR 3192 (Feb. 4, 1988)).

[20] *See, e.g.,* Securities and Exchange Commission, *Mutual Fund Investing: Look at More Than a Fund's Past Performance* (last updated Jan. 24, 2000) http://www.sec.gov/consumer/mperf.htm; Securities and Exchange Commission, *Invest Wisely: An Introduction To Mutual Funds* (last modified Oct. 21, 1996) http://www.sec.gov/consumer/inws.htm; ''Common Sense Investing in the 21st Century Marketplace,'' Remarks by Arthur Levitt, Chairman, SEC, Investors Town Meeting, Albuquerque, NM (Nov. 20, 1999); ''Financial Self-Defense: Tips From an SEC Insider,'' Remarks by Arthur Levitt, Boston Globe ''Moneymatters'' Personal Finance Conference, Boston, MA (Oct. 16, 1999); Transparency in the United States Debt Market and Mutual Fund Fees and Expenses: Hearings Before the Subcomm. on Finance and Hazardous Materials of the House Comm. on Commerce, 105th Cong., 2nd Sess. (Sept. 29, 1998) (Statement of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission).

[21] Securities and Exchange Commission, *The SEC Mutual Fund Cost Calculator* (last modified Jul. 24, 2000) http://www.sec.gov/mfcc/get-started.html.

[22] United States General Accounting Office, Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition (June 2000) (recommending that the Commission require fund quarterly account statements to include the dollar amount of each investor's share of fund operating expenses); Division of Investment Management, Securities and Exchange Commission, Report on Mutual Fund Fees and Expenses (Dec. 2000) (recommending that the Commission consider requiring fund shareholder reports to include a table showing the cost in dollars incurred by a shareholder who invested a standardized amount in the fund, paid the fund's actual expenses, and earned the fund's actual return for the period).

[23] The comment letters and a summary of the comments prepared by the Commission staff are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC (File No. S7–09–00).

[24] Items 2(c)(2)(i) and (iii) of Form N–1A.

[25] Rule 482(e)(4) and (5)(iii); rule 482(f); rule 34b–1(b)(1)(iii)(B) and (C).

[26] General Instruction C.3(d)(iii) and Item 2(c)(2)(iv)(B) of Form N–1A.

understanding the effect of taxes on a fund's performance and allow investors to compare funds' after-tax returns. The presentation of standardized after-tax returns, coupled with the presentation of before-tax returns, will provide investors with a more complete and accurate picture of a fund's performance than before-tax returns standing alone.

We strongly encourage funds to develop web-based calculators and other tools that investors may use to compute their individualized after-tax return for a fund. This information will be very useful to investors in assessing how a particular fund has performed for them. We believe, however, that after-tax returns should be made available to all investors, not only to those who have the ability to access and use these web-based programs. In addition, personalized after-tax calculators often do not facilitate ready comparisons of different funds' after-tax performance.

We do not believe that requiring funds to disclose after-tax returns will place them at a competitive disadvantage vis-à-vis other investments. Investors choose funds over other investment products because they offer advantages unavailable with most other investment products, *e.g.,* access to professional portfolio management and diversification with a relatively small investment. In addition, we are exempting money market funds from the after-tax return disclosure requirement, in part because of our concern that they would be disadvantaged vis-à-vis very similar, competing products.

Finally, we believe that the burden to funds of computing and disclosing after-tax returns is justified by the benefits to investors from receiving this information. While we acknowledge that funds will incur a one-time cost to modify their systems to compute after-tax returns, the computation thereafter should be straightforward to perform using readily available data.

*B. Types of Return To Be Disclosed*

As proposed, funds will be required to calculate after-tax returns using a standardized formula similar to the formula presently used to calculate before-tax average annual total return.[27] We proposed to require funds to disclose after-tax return for 1-, 5-, and 10-year periods on both a ''pre-liquidation'' and ''post-liquidation'' basis, and we are adopting that requirement. Pre-liquidation after-tax return assumes that the investor continued to hold fund shares at the end of the measurement period, and, as a result, reflects the effect of taxable distributions by a fund to its shareholders but not any taxable gain or loss that would have been realized by a shareholder upon the sale of fund shares.[28] Post-liquidation after-tax return assumes that the investor sold his or her fund shares at the end of the measurement period, and, as a result, reflects the effect of both taxable distributions by a fund to its shareholders and any taxable gain or loss realized by the shareholder upon the sale of fund shares.[29] Pre-liquidation after-tax return reflects the tax effects on shareholders of the portfolio manager's purchases and sales of portfolio securities, while post-liquidation after-tax return also reflects the tax effects of a shareholder's individual decision to sell fund shares.

Most commenters addressing the issue of whether we should require pre- and post-liquidation after-tax returns supported disclosure of both types of after-tax returns. A few commenters argued that pre-liquidation after-tax return should be eliminated because the addition of another performance figure could overwhelm and confuse investors and, if provided without post-liquidation after-tax return, would tend to suggest to shareholders that taxation could be deferred indefinitely. A few commenters recommended that only pre-liquidation after-tax returns be required because post-liquidation returns reflect the action of a specific shareholder (*i.e.,* the decision to sell fund shares), rather than the tax-efficiency of the fund's portfolio management.

The Commission is adopting, as proposed, the requirement that funds present both pre- and post-liquidation after-tax returns in order to provide investors with a more complete understanding of the impact of taxes on a fund's performance.[30] We believe that pre-liquidation after-tax return is important because it provides information about the tax-efficiency of portfolio management decisions. We also believe, however, that it is important for shareholders, many of whom hold shares for a relatively brief period, to understand the full impact that taxes have on a mutual fund investment that has been sold.[31]

In response to commenters' concerns about investor confusion, we are streamlining the returns required to be disclosed. Most commenters recommended that we revise the proposed pre-liquidation after-tax return figure to deduct fees and charges payable upon a redemption of fund shares, such as sales charges or redemption fees. This would make the pre-liquidation after-tax return figure comparable to currently required standardized before-tax returns, which also deduct fees and charges payable upon sale, and would result in comparable disclosure by funds that impose sales charges upon purchase and those that impose sales charges upon redemption.[32] Commenters also argued that this modification would eliminate the need for the proposed pre-liquidation before-tax return figure with no deduction of fees and charges payable upon sale, thereby simplifying the presentation of before- and after-tax returns.

We agree and have eliminated pre-liquidation before-tax returns. This will result in three, rather than four, types of return, all of which are net of all fees and charges: before-tax return; return after taxes on distributions (pre-liquidation); and return after taxes on distributions and redemption (post-liquidation).[33] To address concerns that investors could be confused by a pre-liquidation after-tax return measure that assumes no sale of fund shares for purposes of computing tax consequences but nonetheless reflects fees and charges payable upon a sale of fund shares, we have modified the captions in the performance table to focus investor attention on the taxes that are deducted, rather than whether or not the shareholder held or sold his shares.[34]

*C. Location of Required Disclosure*

We are requiring, as proposed, that funds disclose after-tax returns in the performance table contained in the risk/return summary of the prospectus.[35] The amendments also will have the effect of requiring that after-tax returns be included in any fund profile because a profile must include the prospectus risk/return summary.[36] We proposed,

[27] *See* Item 21(b)(1) of Form N–1A.

[28] Proposed Item 21(b)(3) of Form N–1A.

[29] Proposed Item 21(b)(4) of Form N–1A.

[30] Items 21(b)(2) and (3) of Form N–1A.

[31] A recent report estimates that over the past decade the average holding period of mutual funds has decreased from over 10 years to about 3 years. Steve Galbraith, Mary Medley, Sean Yu, The Apotheosis of Stuart—Lighting the Candle in U.S. Equities, Bernstein Research Call, Sanford C. Bernstein & Co., Jan. 10, 2000.

[32] Instruction 4 to Item 21(b)(1) of Form N–1A.

[33] Items 2(c)(2)(i) and (iii) and 21(b)(1)–(3) of Form N–1A.

[34] *See* Section II.D., *infra,* regarding modifications to the format of disclosure.

[35] Item 2(c)(2)(iii) of Form N–1A.

[36] Rule 498(c)(2)(iii) under the Securities Act (17 CFR 230.498(c)(2)(iii)). In addition, after-tax returns would be required in registration statements filed on Form N–14 [17 CFR 239.23], the registration

Continued

but are not adopting, a requirement that after-tax returns be included in Management's Discussion of Fund Performance (''MDFP''), which is typically contained in the annual report.[37] Funds will, however, be required to state in the MDFP that the performance table and graph do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of fund shares.[38]

We are requiring that after-tax returns be included in the prospectus and profile because, for the overwhelming majority of prospective investors who base their investment decision, in part, on past performance, after-tax returns can be useful in understanding past performance.[39] Most commenters that addressed the issue of the appropriate location for after-tax return disclosure supported requiring disclosure of after-tax returns in fund prospectuses.

Several commenters recommended that after-tax returns not be included in fund profiles. Commenters were concerned that the length and complexity of the disclosure could overwhelm the remaining information in the profile, defeating the purpose of the summary disclosure document. We continue to believe, however, that after-tax returns should be included in the fund profile because of the importance of past performance in many investors' investment decisions. We have, however, addressed the concerns expressed by commenters by simplifying the presentation of required after-tax returns.[40]

Some commenters supported inclusion of after-tax returns in the risk/return summary, but others recommended that after-tax returns be disclosed in the section of the prospectus describing the tax consequences to investors of buying, holding, exchanging, and selling fund shares.[41] These commenters argued that the required disclosure is too lengthy and technical for inclusion in the risk/return summary. We believe that it is critical that after-tax returns be disclosed in the same location as before-tax returns, so that after-tax returns will be easy for investors to find and compare with before-tax returns. Therefore, we are adopting, as proposed, the requirement that after-tax returns be presented in the risk/return summary. In addition, in response to commenters' concerns that the proposed disclosure would be too lengthy or complex for inclusion in the risk/return summary, we have simplified the presentation of returns in the table, as well as the accompanying narrative.[42]

We have decided not to require funds to include after-tax returns in the MDFP, which is typically contained in the annual report. Many commenters who addressed the issue of the appropriate location for disclosing after-tax returns recommended that after-tax returns not be included in the MDFP. As commenters observed, existing shareholders already receive detailed information that allows them to determine the tax impact of their investment in the fund.[43] They also typically receive on an annual basis an updated prospectus that will contain after-tax performance information.[44] Moreover, commenters pointed out that, because after-tax returns in the MDFP would have been calculated on a fiscal year basis, they would not be comparable from fund to fund, and use of fiscal year results could enable funds to time distributions in order to artificially enhance after-tax returns. We have therefore decided not to require disclosure of after-tax returns in the MDFP.

We are concerned, however, that investors may be confused about whether the returns included in the performance table and graph in the MDFP have been calculated on a before- or after-tax basis. Therefore, funds will be required to include a statement in the MDFP that accompanies the performance table and graph to the effect that the returns shown do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of fund shares.[45]

*D. Format of Disclosure*

We are requiring, as proposed, that before and after-tax returns be presented in a standardized tabular format. Consistent with the modifications to the types of returns required, funds must present before- and after-tax returns as follows:[46]

AVERAGE ANNUAL TOTAL RETURNS

[For the periods ended December 31,———]

| | 1 year | 5 years [or life of fund] | 10 years [or life of fund] |
|---|---|---|---|
| Return Before Taxes | 111% | 111% | 111% |
| Return After Taxes on Distributions | 111% | 111% | 111% |
| Return After Taxes on Distributions and Sale of Fund Shares | 111% | 111% | 111% |
| *Index* (reflects no deduction for [fees, expenses, or taxes]) | 111% | 111% | 111% |

form used by mutual funds to register securities to be issued in mergers and other business combinations under the Securities Act. *See* Item 5(a) of Form N–14 (cross-referencing Item 2 of Form N–1A).

[37] *See* Proposing Release, *supra* note , at nn. 36–41, and accompanying text.

[38] Item 5(b)(2) of Form N–1A.

[39] An estimated 88 percent of mutual fund shareholders considered the total return of the fund before their most recent fund purchase. Seventy-five percent of mutual fund shareholders considered the fund's performance relative to similar funds. ICI, *Understanding Shareholders' Use of Information and Advisers, supra* note 18, at 21.

[40] *See* Section II.B., *supra,* regarding modifications to the types of returns required; Section II.D., *infra,* regarding modifications to the format of disclosure, including simplification of presentation for funds offering more than one class of shares in the prospectus; Section II.H., *infra,* regarding the narrative accompanying the performance table.

[41] Item 7(e) of Form N–1A.

[42] *See* discussion in note 40, *supra.*

[43] Annually, funds are required to send Form 1099–DIV or a similar statement to any shareholder receiving $10 or more in taxable income. I.R.C. 6042. Form 1099–DIV reports the amount and character of fund distributions (*e.g.,* ordinary dividends, capital gain distributions, and non-taxable distributions) received by shareholders during the year. Funds also are required to send Form 1099–B or a similar statement to any shareholder who sells, exchanges, or redeems fund shares during the year. I.R.C. 6045. Form 1099–B reports the proceeds from the sale of fund shares.

[44] The Securities Act requires mutual funds to send updated prospectuses only to those existing shareholders who make additional purchases. In practice, many mutual funds send an updated prospectus annually to all of their shareholders.

[45] Item 5(b)(2) of Form N–1A.

[46] Item 2(c)(2)(iii) of Form N–1A.

Before- and after-tax returns must be presented in the order specified, using the captions provided by Form N–1A. When more than one fund or series is offered in a prospectus, the before- and after-tax returns of each fund or series must be adjacent to one another. A prospectus may not, for example, present the before-tax returns for all funds, followed by the after-tax returns for all funds.[47] We believe that this presentation will help investors to compare funds and to understand the differences among the different measures of return for any particular fund.

We have modified the captions in the performance table to focus investor attention on the taxes that are deducted, rather than whether or not the shareholder held or sold his shares. We have also modified the captions to clarify that returns are shown for the life of the fund, if shorter than the 5- or 10-year measurement periods, and that the language following the caption for the index may be modified, as appropriate, to be consistent with the index selected by the fund.

We have also simplified the presentation for funds that offer multiple classes of a fund in a single prospectus. We were persuaded by several commenters who argued that requiring after-tax returns for all classes of a fund, as proposed, could result in overwhelming or confusing disclosure to investors, and that, with the exception of expense ratio differences, which affect the level of dividend distributions, the tax burden of the various share classes will be similar. We have modified the amendments to require that a fund offering multiple classes in a single prospectus present the after-tax returns of only one class.[48] The class selected must be offered to investors who hold their shares through taxable accounts and have returns for at least 10 years, or, if no such class has 10 years of return, be the class with the returns for the longest period.

A fund that offers multiple classes in a single prospectus must explain in the narrative that accompanies the performance table that the after-tax returns are for only one class offered by the prospectus and that the after-tax returns for other classes will vary.[49] In addition, in order to facilitate comparisons among the returns shown, after-tax returns for the one class presented must be adjacent to the before-tax returns for that class and not interspersed with the before-tax returns of the other classes, returns of other funds, or with the return of the broad-based securities market index.[50] The return of the broad-based securities index may either precede or follow the returns for the fund.[51]

*E. Exemptions From the Disclosure Requirement*

We are exempting money market funds from the requirement to disclose after-tax returns, as proposed.[52] We are also adopting, with modifications, our proposal to permit a fund to omit the after-tax return information in a prospectus used exclusively to offer fund shares as investment options for defined contribution plans and similar arrangements.[53]

Specifically, we are permitting a fund to omit the after-tax return information in a prospectus used exclusively to offer fund shares as investment options to one or more of the following:

- A defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (''Code'');
- A tax-deferred arrangement under section 403(b) or 457 of the Code;
- A variable contract as defined in section 817(d) of the Code;
- A similar plan or arrangement pursuant to which an investor is not taxed on his or her investment in the fund until the investment is sold;[54] or
- Entities that are not subject to the individual federal income tax.

The proposed after-tax return information would largely be irrelevant in these circumstances because the affected investors either are not subject to current taxation on fund distributions or are not subject to current taxation at the individual federal income tax rates, and their tax consequences on a sale of fund shares are different from those experienced by individual investors in taxable accounts.[55]

In response to the recommendations of several commenters, we have expanded the exemption to include prospectuses used to offer fund shares to entities that are not subject to individual taxation (e.g., tax-exempt foundations, colleges, and corporations). We agree that the after-tax return information is not relevant to these investors. A fund may not, however, rely on this exemption if the prospectus is used indirectly to offer shares to persons that are subject to individual taxation, such as an offer to a partnership whose individual partners are taxed on a pass-through basis.[56]

The Commission carefully considered whether to exclude bond funds, generally, or tax-exempt funds, specifically, from the requirement to disclose after-tax returns. A number of commenters argued that bond funds should be exempt from disclosing after-tax returns because investors in bond funds are generally aware of the tax consequences of investing in these funds, the funds do not usually make unexpected distributions of capital gains, and the funds are bought for their yield and not their growth potential. Other commenters argued that bond funds should not be exempt because such funds may have significant capital gains or losses in volatile markets, certain types of bond funds commonly realize significant capital gains, and some managers of bond funds seek to avoid making capital gains distributions by using various tax management strategies.

Having considered the views expressed by commenters, we have decided not to exempt bond funds from disclosing after-tax returns. While investors may more readily understand the tax impact of owning a bond fund that makes few, if any, capital gains distributions, than the tax impact of owning other funds, bond funds may have significant capital gains or losses, and we believe that it is important for after-tax return information to be available to their shareholders.

Similarly, while most, if not all, income distributed by a tax-exempt mutual fund generally will be tax-exempt, a tax-exempt mutual fund may also make capital gains distributions that are taxable and an investor is taxed on gains from the sale of fund shares.[57]

[47] Item 2(c)(2)(iii) of Form N–1A; Instruction 2(e) to Item 2 of Form N–1A.

[48] Instruction 3(c)(ii) to Item 2 of Form N–1A.

[49] Item 2(c)(2)(iv)(C) of Form N–1A.

[50] Instructions 2(e) and 3(c)(iii) to Item 2 of Form N–1A.

[51] Instruction 2(e) to Item 2 of Form N–1A.

[52] Item 2(c)(2)(iii) of Form N–1A.

[53] General Instruction C.3(d)(iii) of Form N–1A

[54] These similar plans or arrangements may include those existing under current tax law or new types of plans or arrangements permitted by future changes in the tax law.

[55] *See* IRS Publication 575, *Pension and Annuity Income* (2000), at 4 (explaining tax treatment of earnings under a variable annuity contract) and 7–19 (explaining tax treatment of distributions from retirement plans); IRS Publication 525, *Taxable and Non-Taxable Income* (2000), at 6 (explaining tax treatment of contributions to a retirement plan) and 15 (explaining tax treatment of proceeds of a life insurance contract); IRS Publication 575, *Pension and Annuity Income* (2000), at 5 (tax treatment of Section 457 Deferrred Compensation Plan); IRS Publication 571, *Tax Sheltered Annuity Programs for Employees of Public Schools and Certain Tax-Exempt Organizations* (1999), at 2 (explaining tax treatment of section 403(b) tax sheltered annuities).

[56] I.R.C. 702 (regarding taxation of partners).

[57] Interest on any state or local bond is excluded from gross income. However, there is no exclusion for capital gains resulting from the sale of such bonds. *See* I.R.C. 103(a); IRS Publication 564,

Continued

As a result, the performance of a tax-exempt fund may be affected by taxes, and taxes may have a greater or lesser impact on different tax-exempt funds. Therefore, we have decided not to exempt tax-exempt funds from the required disclosure.[58]

*F. Advertisements and Other Sales Literature*

We are adopting, with modifications, amendments that require certain fund advertisements and sales literature to include after-tax performance that is calculated according to the standardized formulas prescribed in Form N–1A for computation of after-tax returns in the risk/return summary. As proposed, all fund advertisements and sales literature that include after-tax performance information will be required to include after-tax returns computed according to the standardized formulas.[59] Any quotation of non-standardized after-tax return also will be subject to the same conditions currently applicable to quotations of non-standardized performance that are included in fund advertisements and sales literature.[60] Requiring advertisements and sales literature that include after-tax performance information to include standardized after-tax returns will help to prevent misleading advertisements and sales literature and permit shareholders to compare claims about after-tax performance.

Commenters generally supported the proposal to require fund advertisements and sales literature that include after-tax performance information to include standardized after-tax returns, but several commenters recommended that we extend the requirement to advertisements and sales literature that claim that a fund is ''tax-managed'' or ''tax-efficient'' and that include any performance information. As noted by one commenter, a fund advertising 20 percent before-tax return and claiming 100 percent tax-efficiency could have significant unrealized gains that would result in tax liabilities when a shareholder redeems his or her shares. We are persuaded that, to help prevent such tax-efficiency claims from being misleading, such advertisements should include standardized after-tax returns, which will help an investor to assess the tax-efficiency of the fund more accurately. Therefore, we have modified the proposal to require the inclusion of standardized after-tax returns in any advertisement or sales literature that includes a quotation of performance and that represents or implies that the fund is managed to limit or control the effect of taxes on performance.[61]

This requirement does not apply to advertisements or sales literature for a fund that is eligible to use a name suggesting that the fund's distributions are exempt from federal income tax or from both federal and state income tax under our recently-adopted fund names rule.[62] Because these funds meet the strict standards of the names rule, we have concluded that the additional requirement for including standardized after-tax returns in advertisements or sales literature should not apply to them unless they voluntarily choose to include after-tax performance information.

One commenter recommended that we prohibit funds from publishing after-tax returns for periods of less than one year. The commenter argued that this would prevent funds from reporting year-to-date after-tax returns just before a large taxable distribution, wrongly suggesting to shareholders that the fund had been tax-efficient. While we have decided not to prohibit funds from publishing after-tax returns for periods of less than one year in all cases, we remind funds that sales materials are subject to the antifraud provisions of the federal securities laws and that compliance with the terms of rule 482 under the Securities Act or rule 34b–1 under the Investment Company Act is not a safe harbor from liability for fraud.[63] Therefore, any fund that publishes after-tax returns for periods shorter than one year should be extremely careful to ensure that the returns are not materially misleading, *e.g.,* because the returns incorrectly suggest that a fund has been more tax-efficient than has, in fact, been the case.

*G. Formulas for Computing After-Tax Return*

We are adopting, with the modifications discussed below, the requirement that funds compute after-tax returns using standardized formulas that are based largely on the current standardized formula for computing before-tax average annual total return.[64] After-tax returns will be computed assuming a hypothetical $1,000 one-time initial investment and the deduction of the maximum sales load and other charges from the initial $1,000 payment.[65] Also, after-tax returns will be calculated for 1-, 5-, and 10-year periods.[66]

1. Tax Bracket

We are requiring, as proposed, that standardized after-tax returns be calculated assuming that distributions

*Mutual Fund Distributions* (2000), at 2 (describing tax treatment of tax-exempt mutual funds).

[58] A tax-exempt fund, like any other fund, may assume, when calculating after-tax returns, that no taxes are due on the portions of any distribution that would not result in federal income tax on an individual. Instruction 3(a) to Item 21(b)(2) and Instruction 3(a) to Item 21(b)(3) of Form N–1A.

[59] Rule 482(e)(4) permits the standardized after-tax returns for 1-, 5-, and 10-year periods to be contained in an advertisement, provided that the standardized after-tax returns (i) are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication; (ii) are accompanied by quotations of standardized before-tax return; (iii) include both measures of standardized after-tax return; (iv) are set out with equal prominence to one another and in no greater prominence than the required quotations of standardized before-tax return; and (v) identify the length of and the last day of the 1-, 5-, and 10-year periods.

Any other measure of after-tax return could be included in advertisements if accompanied by the standardized measures of after-tax return. Rule 482(e)(5)(iii). Similarly, measures of after-tax return may be included in other sales materials if accompanied by the standardized measures of after-tax return. Rule 34b–1(b)(1)(iii)(B).

A quotation of standardized tax equivalent yield in an advertisement or other sales literature need not be accompanied by standardized after-tax returns. Rules 482(e)(2) and 34b–1(b)(iii)(B).

[60] Specifically, any measure of after-tax return in a rule 482 advertisement will be required to reflect all elements of return and be set out in no greater prominence than the required quotations of standardized before-tax and after-tax returns. The advertisement will be required to identify the length of and the last day of the period for which performance is measured. Rule 482(e)(5)(i), (iv), and (v).

Likewise, any sales literature that contains a quotation of performance that has been adjusted to reflect the effect of taxes remain subject to the other requirements of rule 34b–1.

[61] We believe that any fund that uses terms such as tax-managed, tax-efficient, tax-sensitive, or tax-aware in its name is representing or implying that the fund is managed to limit or control the effect of taxes on performance. Therefore, a fund using these terms in its name will be required to include standardized after-tax returns in any advertisement or sales literature that includes a quotation of performance.

[62] Rules 482(e)(6) and 34b–1(b)(1)(iii)(C). The fund names rule, rule 35d–1(a)(4), requires a fund that uses a name suggesting that a fund's distributions are exempt from federal income tax or from both federal and state income tax to adopt a fundamental policy under section 8(b)(3) of the Investment Company Act: (i) To invest at least 80 percent of its assets in investments the income from which is exempt, as applicable, from federal income tax or from both federal and state income tax; or (ii) to invest its assets so at least 80 percent of the income that it distributes will be exempt, as applicable, from federal income tax or from both federal and state income tax. *See* Investment Company Names, Investment Company Act Release No. 24828 (Jan. 17, 2001).

[63] *See, e.g.,* Advertising by Investment Companies, Investment Company Act Release No. 16245 (Feb. 2, 1988) [53 FR 3868 (Feb. 10, 1988)], at n.51. *See also* section 17(a) of the Securities Act [15 U.S.C. 77q]; section 10(b) of the Exchange Act [15 U.S.C. 78j(b); section 34(b) of the Investment Company Act [15 U.S.C. 80a–33]; section 206 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–6].

[64] Items 21(b)(2) and (3) of Form N–1A.

[65] Items 21(b)(2) and (3) of Form N–1A; Instruction 1 to Item 21(b)(2) and Instruction 1 to Item 21(b)(3) of Form N–1A.

[66] Items 21(b)(2) and (3) of Form N–1A.

by the fund and gains on a sale of fund shares are taxed at the highest applicable individual federal income tax rate.[67] Comment was divided on this issue. Some commeters supported the highest tax rate as providing investors with the full range of historical after-tax returns, as well as being the simplest rate to use to compute after-tax returns. Other commenters, however, recommended that we require funds to calculate after-tax returns using an intermediate tax rate in addition to, or in lieu of, the highest tax rate. These commenters observed that the typical mutual fund investor is not in the highest tax bracket, and argued that after-tax returns calculated using tax rates to which the typical mutual fund investor is subject would be more useful.

After careful consideration of these comments, we continue to believe that it is most appropriate to use the highest tax rate, rather than an intermediate rate. Computing after-tax returns with maximum tax rates will provide investors with the ''worst-case'' federal income tax scenario. Coupled with before-tax return, which reflects the imposition of taxes at a 0 percent rate, this ''worst-case'' scenario will effectively provide investors with the full range of historical after-tax returns. We believe that providing the full range of federal income tax outcomes provides investors the most complete information.

In addition, we concluded that any benefits of using an intermediate tax rate would be outweighed by the complexity of determining the appropriate intermediate rate from one year to the next as tax rates and the income of a typical mutual fund investor change. Most of the commenters who recommended that after-tax returns be calculated using an intermediate rate suggested that we either use a specific rate (*e.g.,* 28 percent) or select a specific income level (*e.g.,* $55,000) that would be used to identify the appropriate tax rate. If we were to adopt either of these approaches, we would be required to make ongoing modifications to respond to changes in tax rates and income levels. One commenter suggested that we determine the intermediate rate by reference to the median United States household income reported by the U.S. Census Bureau. This approach would be predicated on assumptions about the ''typical'' mutual fund investor and the past, present, and future income of that investor.

In any case, a requirement that funds calculate after-tax returns using an intermediate rate would effectively require that we continually monitor the changing demographics of mutual fund investors, as well as changing tax laws, and update our rules accordingly. The use of an intermediate rate also would require that funds include complex narrative disclosure in the risk/return summary about how the intermediate rate had been selected or what intermediate rate had been used from year to year.[68]

While we are not adopting a requirement that funds calculate after-tax returns using an intermediate rate, we encourage funds to provide their investors with additional information that is tailored to a particular fund's typical investor, or to make available to investors after-tax returns calculated using multiple tax rate assumptions. Funds can supply this information in a variety of ways (*e.g.,* calculators on their websites or disclosure elsewhere in the prospectus of returns calculated based on different tax rate assumptions).

2. Capital Gains and Losses Upon a Sale of Fund Shares

We are adopting, substantially as proposed, amendments requiring that return, after taxes on distributions and redemption, be computed assuming a complete sale of fund shares at the end of the 1-, 5-, or 10-year measurement period, resulting in capital gains taxes or a tax benefit from any resulting capital losses.[69] As proposed, a fund will be required to track the actual holding periods of reinvested distributions and may not assume that they have the same holding period as the initial $1,000 investment.[70] We have made technical changes to clarify that applicable federal tax law should be used to determine whether and how gains and losses from the sale of shares with different holding periods should be netted, as well as the tax character (*e.g.,* short-term or long-term) of any resulting gains or losses.[71]

Several commenters suggested that we permit funds to calculate taxes on gains realized upon a sale of shares at the end of the one-year period (*i.e.,* short-term capital gains) as if the shares had been held for one year and one day (*i.e.,* long-term capital gains).[72] These commenters argued that a reasonable shareholder would hold the shares for the extra day in order to qualify for the more advantageous tax treatment, and that it is inappropriate to assume that shares would be sold at the end of the one-year period. We are not modifying the proposal to reflect this comment. A shareholder who redeems his or her shares at any time during the one-year period is subject to taxation of gains at short-term rates. We believe that it is important for the after-tax return calculation to accurately reflect the fact that redeeming shares within the one-year period may have significant adverse tax consequences. In addition, we are providing that the tax consequences of a sale of fund shares should be determined in accordance with applicable federal tax law on the redemption date. If we were, instead, to prescribe a special rule for one-year returns, we would have to reevaluate this special rule in light of subsequent changes in tax law, such as increases to the holding period required for long-term gain treatment.

A number of commenters suggested other modifications to the proposal regarding the tracking of holding periods, such as treating the holding period of all reinvested distributions as beginning on the date of the original investment, and treating all gains on redemption as qualifying for long-term capital gains treatment. We are not adopting these recommended modifications, each of which would have the effect of reclassifying short-term gains as long-term gains, as they would minimize the impact of short-term gains on fund returns, in a manner

[67] Instruction 4 to Item 21(b)(2) of Form N–1A; Instruction 4 to Item 21(b)(3) of Form N–1A.

Currently, the highest individual marginal income tax rate imposed on ordinary income is 39.6%, and the highest rate imposed on long-term capital gains is 20%. I.R.C. 1(a)–(d), (h).

[68] The concerns expressed by the commenters are, in any event, mitigated by the fact that after-tax returns will not reflect state and local taxes, which are often quite significant.

State income tax rates can be as high as 12%; and a rate of 6%–7%, or higher, is common on taxable income of $55,000, the income level suggested by commenters as representative of a typical mutual fund investor. *See* The World Almanac and Book of Facts 161 (2000) (state income tax rates).

[69] Instructions 6 and 7 to Item 21(b)(3) of Form N–1A. In order to simplify the computation of returns after taxes on distributions and sale of fund shares, funds may assume that a taxpayer has sufficient capital gains of the same character to offset any capital losses on a sale of fund shares and therefore that the taxpayer may deduct the entire capital loss. Instruction 7(d) to Item 21(b)(3) of Form N–1A.

[70] Instruction 7(c) to Item 21(b)(3) of Form N–1A.

A fund would also be required to separately track the basis of shares acquired though the $1,000 initial investment and each subsequent purchase through reinvested distributions. We wish to clarify that a distribution representing a return of capital will reduce the basis of an existing lot of shares and be included in the basis of the shares acquired upon reinvestment, which may have the effect of shifting the amount of basis allocated to shares with various holding periods.

[71] Instruction 7(d) to Item 21(b)(3) of Form N–1A.

[72] I.R.C. 1222(1) provides that the term ''short-term capital gain'' means ''gain from the sale or exchange of a capital asset held for not more than 1 year, if and to the extent such gain is taken into account in computing gross income.''

inconsistent with federal tax law. One of our purposes in requiring the disclosure of after-tax returns is to provide investors with information about the differential impact that taxes have on the before-tax returns of various funds, and we believe that ignoring the effect of short-term gains would tend to minimize these differences inappropriately.

3. Other Assumptions

Commenters generally supported the other assumptions that the Commission proposed to require in the computation of after-tax returns, and we are adopting those requirements as proposed. Specifically, after-tax returns:

- Will be calculated using historical tax rates; [73]
- Will be based on calendar-year periods, consistent with the before-tax return disclosure that currently appears in the risk/return summary; [74]
- Will exclude state and local tax liability; [75]
- Will not take into account the effect of either the alternative minimum tax or phaseouts of certain tax credits, exemptions, and deductions for taxpayers whose adjusted gross income is above a specified amount; [76]
- Will assume that any taxes due on a distribution are paid out of that distribution at the time the distribution is reinvested and reduce the amount reinvested; [77] and
- Will be calculated assuming that the taxable amount and tax character (*e.g.,* ordinary income, short-term capital gain, long-term capital gain) of each distribution are as specified by the fund on the dividend declaration date, adjusted to reflect subsequent recharacterizations.[78]

*Tax treatment of distributions.* As proposed, we are not specifying in detail the tax consequences of fund distributions. Funds generally should determine the tax consequences of distributions by applying the tax law in effect on the date the distribution is reinvested. However, because a number of commenters expressed concern about whether a fund that has elected to pass through foreign tax credits to its shareholders may reflect the foreign tax credit in after-tax returns, we are providing that the effect of applicable tax credits, such as the foreign tax credit, should be taken into account in accordance with federal tax law.[79]

*H. Narrative Disclosure*

We are adopting, with modifications, the requirement that funds include a short, explanatory narrative adjacent to the performance table in the risk/return summary.[80] This is intended to facilitate investor understanding of the table. We are not mandating specific language for the narrative, but it must be in plain English.[81]

Commenters generally agreed that the proposed narrative disclosure would help investors understand information in the performance table. Several commenters, however, recommended streamlining the narrative by combining some of the proposed items with the narrative currently required for before-tax returns and by eliminating technical items unnecessary for investor understanding of performance information. We agree and have modified the narrative disclosure to require the following information: [82]

- After-tax returns are calculated using the historical highest individual federal marginal income tax rates, and do not reflect the impact of state and local taxes; and
- Actual after-tax returns depend on the investor's tax situation and may differ from those shown, and the after-tax returns shown are not relevant to investors who hold their fund shares through tax-deferred arrangements such as 401(k) plans or individual retirement accounts.[83]

In addition, a fund will be required to provide a statement to the effect that the fund's past performance, before and after taxes, is not necessarily an indication of how the fund will perform in the future.[84]

*I. Technical and Conforming Amendments*

We proposed to amend rule 482(e)(3) under the Securities Act in order to clarify that the average annual total returns that are required to be shown in any performance advertisement are before-tax returns net of fees and charges payable upon a sale of fund shares. This technical change is no longer necessary due to modifications we have made to the types of returns required. We are adopting, as proposed, amendments to rule 34b-1(b)(3) under the Investment Company Act to exclude after-tax performance information contained in periodic reports to shareholders from the updating requirements of the rule.

We proposed to delete an instruction contained in Form N–1A that provides that total return information in a mutual fund prospectus need only be current to the end of the fund's most recent fiscal year because the items of Form N–1A that require funds to include total returns in the prospectus have explicit instructions about how current the total return information must be. We have decided not to delete this instruction because it applies to returns that are not

[73] Instruction 4 to Item 21(b)(2) of Form N–1A; Instruction 4 to Item 21(b)(3) of Form N–1A. The Proposing Release sets forth the maximum federal income tax rates for the years 1990–2000. Proposing Release, *supra* note , at n.66, and accompanying text.

[74] Item 2(c)(iii) of Form N–1A.

[75] Instruction 4 to Item 21(b)(2) of Form N–1A; Instruction 4 to Item 21(b)(3) of Form N–1A.

[76] *Id.*

[77] Instruction 3 to Item 21(b)(2) of Form N–1A; Instruction 3 to Item 21(b)(3) of Form N–1A.

[78] *Id.*

[79] Instruction 3 to Item 21(b)(2) of Form N–1A; Instruction 3 to Item 21(b)(3) of Form N–1A. A fund may elect to pass through to shareholders foreign tax credits if more than 50 percent of the value of the fund's total assets at the close of the taxable year consists of stock or securities in foreign corporations and the fund otherwise qualifies for favorable tax treatment as a regulated investment company for the taxable year. I.R.C. 853. In computing after-tax returns, a fund that elects to pass foreign tax credits through to shareholders may assume that the shareholders use those credits. We would not object if a fund adjusts after-tax returns to reflect the impact of distributions of up to $600 of foreign tax credits, the amount of credit that may be taken by a married couple filing jointly without regard to limits on the foreign tax credit. I.R.C. 904(a) and (j)(2). If a fund makes distributions of foreign tax credits in excess of $600, the fund must take into account the limits in the federal tax law on the ability of shareholders to use foreign tax credits.

[80] Item 2(c)(2)(iv) of Form N–1A.

[81] *See* rule 421(b) and (d) under the Securities Act [17 CFR 230.421(b) and (d)] (requiring that all information in the prospectus be presented in clear, concise, and understandable fashion and that registrants use plain English principles in the organization, language, and design of the summary and risk factors sections of their prospectuses); General Instruction C.1 to Form N–1A (fund prospectus should be easy to understand and promote effective communication); Item 2 of Form N–1A (requiring that the response to Item 2 be stated in plain English).

[82] We eliminated the proposed requirement that funds explain the differences between the types of returns presented, which is unnecessary in light of our reduction of the returns from four to three and our revision of the table captions. We also eliminated the proposed requirement that funds disclose that before-tax returns assume all distributions are reinvested. As commenters noted, funds are not currently required to include this technical information with before-tax returns. We also eliminated the similar proposed requirement that funds disclose that after-tax returns assume that taxes are paid out of fund distributions and that distributions, less taxes, are reinvested. Finally, we eliminated the proposed requirement that funds, whose after-tax returns exceed before-tax returns, explain the reason for this result. Funds, however, will have the option of including this explanatory material. Item 2(c)(2)(iv)(D) of Form N–1A.

[83] As discussed above, we have simplified the proposal to require a fund offering more than one class of shares in its prospectus to show after-tax returns for one class only. *See* Section II.D., *supra* notes 48–50 and accompanying text. Consistent with this modification, such funds will be required to include disclosure that after-tax returns are shown for only one class and that after-tax returns for other classes will vary. Item 2(c)(2)(iv)(C) of Form N–1A.

[84] Item 2(c)(2)(i) of Form N–1A.

required by specific items of Form N–1A.[85]

*J. Effective Date; Compliance Dates*

1. Effective Date

The rule and form amendments that the Commission is adopting today will be effective April 16, 2001.

2. Compliance Date for Prospectuses

*February 15, 2002.* All post-effective amendments that are annual updates to effective registration statements and profiles filed on or after February 15, 2002, must comply with the amendments to Form N–1A. Based on the comments, we believe that this will provide funds with sufficient time to make the necessary changes to existing software and internal systems in order to compile after-tax returns and incorporate the new disclosure in their prospectuses. We would not object if existing funds file their first annual update complying with the amendments pursuant to rule 485(b), provided that the post-effective amendment otherwise meets the conditions for immediate effectiveness under the rule.[86]

3. Compliance Date for Advertisements and Other Sales Materials

*October 1, 2001.* All fund advertisements and sales materials must comply with the amendments to rules 482 and 34b-1 no later than October 1, 2001. These amendments apply only to those funds voluntarily choosing to include after-tax returns in advertisements or sales literature, or claiming to be managed to limit or control the effect of taxes on performance and including performance information in these materials. As these funds have made the decision to market themselves in this manner, we believe that they should be required to do so in a standardized fashion as soon as practicable.

**III. Cost/Benefit Analysis**

In the Proposing Release, we analyzed the costs and benefits of our proposals and requested comments and data regarding the costs and benefits of the rule and form amendments. In response to our request for comments, a few commenters generally argued that the proposed amendments would increase costs for the funds and that such costs will be passed on to investors. None of the commenters, however, provided specific data quantifying additional costs.

The rule and form changes will require a fund to disclose its standardized after-tax returns for 1-, 5-, and 10-year periods. After-tax returns, which will accompany before-tax returns in fund prospectuses, will be presented in two ways: (i) After taxes on fund distributions only; and (ii) after taxes on fund distributions and a redemption of fund shares.[87] The before- and after-tax returns would be required to be presented in a standardized tabular format. Although after-tax returns will not generally be required in fund advertisements and sales literature, any fund that either includes after-tax returns in these materials or includes other performance information together with representations that the fund is managed to limit taxes will be required to include after-tax returns computed according to our standardized formulas.

*A. Benefits*

As discussed above, taxes are one of the most significant costs of investing in mutual funds through taxable accounts. In 1999, mutual funds distributed approximately $238 billion in capital gains and $159 billion in taxable dividends.[88] Shareholders investing in stock and bond funds paid an estimated $39 billion in taxes in 1998 on distributions by their funds.[89] Recent estimates suggest that more than two and one-half percentage points of the average stock fund's total return is lost each year to taxes.[90] Moreover, it is estimated that, between 1994 and 1999, investors in diversified U.S. stock funds surrendered an average of 15 percent of their annual gains to taxes.[91]

Despite the tax dollars at stake, many investors lack a clear understanding of the impact of taxes on their mutual fund investments.[92] The tax consequences of distributions are a particular source of surprise to many investors when they discover that they can owe substantial taxes on their mutual fund investments that appear to be unrelated to the performance of the fund. Even if the value of a fund has declined during the year, a shareholder can owe taxes on capital gains distributions if the portfolio manager sold some of the fund's underlying portfolio securities at a gain.

There have been increasing calls for improvement in the disclosure of the tax consequences of mutual fund investments. Mutual funds, as well as third party providers that furnish information to mutual fund shareholders, are responding to this growing investor demand by providing after-tax returns, calculators that investors can use to compute after-tax returns, and other tax information.[93] Indeed, all but a few of the comment letters we received from individual investors supported the Commission's proposal to require standardized after-tax returns.

Currently, the Commission requires mutual funds to disclose significant information about taxes to investors.[94] While this disclosure is useful, we believe funds can more effectively communicate to investors the tax consequences of investing. Therefore, the Commission is adopting amendments to Form N–1A and rules 482 and 34b–1 that will require disclosure of standardized mutual fund after-tax returns.

By requiring all funds to report after-tax performance pursuant to a standardized formula, the amendments will allow investors to compare after-tax performance among funds, which is likely to affect investor decisions relating to the purchase or sale of fund shares. This could have indirect benefits, such as the creation of new funds designed to maximize after-tax performance or causing existing funds to alter their investment strategies to invest in a more tax-efficient manner. The changes in fund investment

[85] Instruction 6 to Item 21(b)(1) of Form N–1A.

[86] 17 CFR 230.485(b).

[87] As discussed above, we have modified the proposal by eliminating the proposed requirement to include after-tax returns in the MDFP, which is typically contained in the annual report. Accordingly, the hour burden for preparing and filing annual reports in compliance with rule 30d–1 will be reduced by 7.5 hours. *See* Proposing Release, *supra* note 1, at nn. 107–110, and accompanying text (discussing the estimated hour burden for proposal requiring after-tax return disclosure in annual reports). Funds will be required to include a statement in the MDFP that accompanies the performance table and graph to the effect that the returns shown do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of fund shares. Item 5(b)(2) of Form N–1A. We believe that the hour burden for the required statement in the MDFP will be negligible and will not result in a change to the current hour burden for preparing and filing annual reports.

[88] 2000 Mutual Fund Fact Book, *supra* note 2, at 56.

[89] Liberty Funds Release, *supra* note 3.

[90] KPMG study, *supra* note 4, at 14.

[91] Clements, *supra* note 5, at C1.

[92] Dreyfus Corporation, *supra* note 6.

[93] *See supra* note 10 and accompanying text.

[94] In its prospectus, a mutual fund is required to disclose (i) the tax consequences of buying, holding, exchanging, and selling fund shares, including the tax consequences of fund distributions; and (ii) whether the fund may engage in active and frequent portfolio trading to achieve its principal investment strategies, and, if so, the tax consequences of increased portfolio turnover and how this may affect fund performance. *See* Item 7(e) of Form N–1A; Instruction 7 to Item 4 of Form N–1A. A fund also must disclose in its prospectus turnover rate and dividends and capital gains distributions per share for each of the last five fiscal years. *See* Items 9(a) and 22(b)(2) of Form N–1A. These items also require funds to show net realized and unrealized gain or loss on investments on a per share basis for each of the fund's last five fiscal years.

strategies and investor behavior resulting from this disclosure may also result in higher average after-tax returns for investors.[95]

Requiring standardized after-tax performance in the prospectus, fund advertisements, and sales literature also should help prevent confusing and misleading after-tax performance claims by funds. Currently, fund advertisements and sales literature may contain tax-adjusted performance calculated according to non-standardized methods. In addition to making it difficult to compare after-tax performance measures among different funds, the lack of a standardized method for computing after-tax returns creates the possibility that after-tax performance information as currently reported could be misleading or confusing to investors.

The amendments will also increase the amount of after-tax performance information available to investors. With the exception of the few funds that publish after-tax performance information, investors currently must rely on third-party providers to obtain information regarding a fund's after-tax performance.

Moreover, information regarding a fund's after-tax performance helps investors understand the magnitude of tax costs and how they affect fund performance. Increased understanding should have the beneficial effect of enhancing investor confidence in the fund industry.

*B. Costs*

The changes in fund investment strategies and investor behavior resulting from the after-tax requirements may have distributional effects among funds depending on their relative after-tax returns. Funds that have lower after-tax returns relative to other funds may experience loss of market share. We expect, however, that any reduction of market share for funds with lower after-tax returns will be offset by a commensurate increase in market share for funds with higher after-tax returns.

Funds affected by the after-tax requirements will incur costs in complying with the new disclosure. Funds will have to compute the after-tax returns using a standardized method prescribed by Form N–1A. The costs associated with computing the new after-tax performance will include the costs of purchasing or developing software, implementing a new system for computing the returns, analyzing data for inclusion in the standardized formula, and training fund employees. In addition, funds will incur costs in incorporating the new disclosure in their prospectuses, advertisements, and sales literature. Funds could also incur costs in responding to questions from investors regarding the after-tax returns.

We expect that the costs of implementing new systems to compute the standardized after-tax performance will largely consist of initial, one-time expenses. In addition, the software development and implementation costs may be reduced if software vendors begin to offer ''off-the-shelf'' programs for computing the standardized after-tax performance data.[96] Also, the costs of analyzing data for inclusion in the standardized formula will be substantially greater in connection with a fund's first-time compliance with the amendments than it will be in subsequent disclosures. Likewise, the costs of revising fund prospectuses, advertisements, and sales literature to incorporate the new disclosure should decrease after the first disclosures complying with the amendments have been made. We note that in response to concerns expressed by certain commenters regarding the burdens imposed on funds by the new requirements, we have simplified the presentation of after-tax returns.[97] Although the costs of updating the disclosure in fund prospectuses, advertisements, and sales literature will be ongoing, the costs incurred in subsequent disclosures should be less than the costs associated with the initial computations and disclosures because neither the formula for calculating performance nor the format for the disclosure will change from year to year.

Because funds filing initial registration statements will not have any performance information to report, the new after-tax performance requirements will not impose any additional costs on the preparation and filing of an initial registration statement on Form N–1A. The disclosure required by the amendments will appear in the first post-effective amendment that is required to include the after-tax return disclosure. The costs associated with including the disclosure in this first post-effective amendment will consist of the costs required for developing a system for performing the standardized calculations and the costs of revising the prospectus to incorporate the new disclosure. The costs incurred by funds choosing to include after-tax returns in fund advertisements and sales literature will be limited to the cost of revising the advertisements and sales literature to incorporate the same standardized after-tax returns that will be required to appear in fund prospectuses.

*Form N–1A.* The primary cost of complying with the amendments to Form N–1A is the cost of preparing and filing post-effective amendments to registration statements. We estimate that 4,500 post-effective amendments to registration statements are filed annually on Form N–1A, for 7,875 portfolios.

These post-effective amendments will contain performance figures and thus be affected by the amendments. For purposes of the Paperwork Reduction Act (''PRA''), we have estimated that the amendments will increase the hour burden per portfolio per filing of a post-effective amendment by 18 hours.[98] Of the 7,875 funds referenced in post-effective amendments, 1,040 are money market funds, which will be exempted from the after-tax disclosure requirements. An additional 1,575 funds are used as investment vehicles for variable insurance contracts, which will be permitted to omit the after-tax information. Thus, approximately 5,260 of the 7,875 funds referenced in post-effective amendments will be affected by the amendments.[99] We estimate that the cost for all funds to comply with the amendments discussed above is $6,059,520.[100]

[95] Given the $2.1 trillion of assets held in individual non-money market fund taxable accounts, even a small change in relative after-tax returns affecting only a small portion of those assets can lead to significant benefits to investors.

[96] A service provider that compiles and disseminates fund pricing and performance information recently announced that it will offer to calculate and publish after-tax returns for its fund clients. *See* Daly, *Program Lets Fund Companies Offer After-Tax Returns* (Dec. 29, 1999) (visited Feb. 9, 2000) http://www.ignites.com/.

[97] As discussed above, we have modified the proposal by: eliminating the proposed requirement to disclose pre-liquidation before-tax returns; eliminating after-tax returns in annual reports; streamlining the required narrative disclosure; and simplifying the presentation for funds that offer multiple classes in a single prospectus.

[98] This estimate is based on the staff's consultations with industry representatives.

[99] The number of funds referenced in post-effective amendments that will be affected by the amendments is computed by subtracting those funds that are exempt from or permitted to omit the after-tax disclosure from the number of funds referenced in post-effective amendments (7,875 – 1,040 – 1,575, or 5,260). For purposes of our analysis, we have not excluded certain funds that also would be permitted to omit the after-tax return disclosure, such as funds that distribute prospectuses for use by investors in 401(k) plans or other similar tax-deferred arrangements. While these funds will be permitted to omit the after-tax return disclosure in prospectuses distributed to investors in these tax-deferred arrangements, they will still incur a burden from including the disclosure in prospectuses distributed to other investors.

[100] This cost estimate is calculated by multiplying the estimated number of hours to comply with the requirements (94,680 hours) by the weighted average hourly wage ($64). The Commission's

The amendments to Form N–1A will impose other related costs on funds. Our current estimated cost of preparing a post-effective amendment to a previously effective registration statement is $7,500. We estimate that the additional cost imposed by the amendments to Form N–1A is $1,860 per portfolio/fund or a total cost of $9,783,600.[101] This estimate represents the cost of developing and implementing a computerized system for compiling tax data and computing after-tax returns and the costs of hiring outside counsel to assist in revising the prospectus to incorporate the new after-tax return disclosure.[102] Again, a portion of this cost burden will be comprised largely of initial, one-time costs.

*Rule 482.* Rule 482 is a safe harbor that permits a fund to advertise information the ''substance of which'' is contained in its statutory prospectus, subject to the requirements of the rule. Rule 482 limits performance information to standardized quotations of yield and total return and other measures of performance that reflect all elements of return.

Because rule 482 does not require funds to perform any computations not required by the amendments for Form N–1A, the primary cost of complying with the amendments is the cost of the additional hour burden that is outlined in our PRA analysis. As described above, there are approximately 5,260 funds filing post-effective amendments that will be affected by the amendments. The Commission further estimates that three percent of these funds will elect to use advertisements or sales literature that either include after-tax returns or include other performance information together with representations that the fund is managed to limit or control the effect of taxes on performance and therefore be required to comply with the amendments to rule 482.[103] For purposes of the PRA, we have estimated that the additional hour burden required to comply with the amendments to rule 482 is .5 hours.[104] The amendments to rule 482 will thus impose additional estimated costs of $5,506.[105]

*Rule 34b–1.* Rule 34b–1 governs sales material that is accompanied or preceded by the delivery of a statutory prospectus and requires the inclusion of standardized performance data and certain legend disclosure in sales material that includes performance data. As with the amendments to rule 482, these amendments will not require funds to perform any computations not required by the amendments to Form N–1A. Hence, the cost of complying with these amendments is primarily the cost associated with the burden estimate in our PRA analysis.

We estimate that approximately 8,495 respondents file approximately 4.35 responses annually pursuant to rule 34b–1.[106] Of these respondents, we estimate that 1,040 are money market funds that will be exempt from the amendments and that an additional 620 funds and unit investment trusts (''UITs'') registered on Forms N–3 and N–4 will not be affected by the amendments. We estimate that an additional 1,575 funds registered on Form N–1A and subject to rule 34b–1 are used as underlying portfolios for variable insurance contracts and will not use advertisements or sales literature that include after-tax returns or include other performance information together with representations that the fund is managed to limit or control the effect of taxes on performance. Thus, 5,260 respondents subject to rule 34b–1 will also be subject to the after-tax disclosure.[107] We further estimate that three percent of respondents subject to rule 34b–1 or 157.8 respondents will elect to use advertisements or sales literature that either include after-tax returns or include other performance information together with representations that the fund is managed to limit or control the effect of taxes on performance and therefore be subject to the amendments.[108] For purposes of the PRA, we have estimated that the additional hour burden attributable to the amendments to rule 34b–1 is .5 hours, for a total of 78.9 annual burden hours or $5,049.60.[109]

## IV. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[110] The Commission has considered these factors.

The Commission believes that the after-tax return requirements will help to increase investor understanding of a fund's after-tax performance. Increased understanding should enable investors to better evaluate various funds in determining which funds are most suitable for their investment needs. More educated investors should promote competition among funds as they seek to attract those investors interested in the impact of taxes on fund investments. On balance, the Commission believes that the after-tax return requirements will benefit investors, foster efficiency, and promote competition among mutual funds. While investors will be better equipped to make investment decisions, it is unclear whether these amendments will result in an increase in capital formation.

## V. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with 5 U.S.C. 604. The Commission proposed amendments to Form N–1A (17 CFR 239.15A and 274.11A), the registration form used by mutual funds to register under the Act and to offer their shares under the Securities Act, and amendments to rule 482 under the Securities Act and rule

estimate concerning the burden hours is based on the staff's consultation with industry representatives. The Commission's estimate concerning the wage rate is based on salary information for the securities industry compiled by the Securities Industry Association. *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 1999* (Sept. 1999).

[101] The estimate is based on the staff's consultation with industry representatives.

[102] Software-related costs may decrease as vendors offering services for computing the new standardized after-tax returns enter the market. See Daly, *Program Lets Fund Companies Offer After-Tax Returns* (Dec. 29, 1999) (visited Feb. 9, 2000) http://www.ignites.com/.

[103] This estimate is based on the assumption that tax-managed funds and index funds would be most likely to use advertisements that either include after-tax returns or include other performance information together with representations that the fund is managed to limit or control the effect of taxes on performance.

[104] This estimate is based on the staff's consultations with industry representatives.

[105] The total cost of the annual hour burden is calculated by multiplying the annual hour burden (79) by the weighted average hourly wage ($64). *See supra* note 100.

[106] These estimates are based on filings received in calendar year 1999.

[107] This number is computed by subtracting from the number of respondents filing rule 34b–1 sales material the number of money market funds, the number of funds and UITs registered on Forms N–3 and N–4, and the number of funds used as underlying portfolios for variable insurance contracts (8,495 − 1,040 − 620 − 1,575, or 5,260).

[108] This estimate is based on the assumption that tax-managed funds and index funds would be most likely to advertise after-tax performance.

[109] The total annual burden for the amendments is computed by multiplying the estimated number of respondents (157.8) subject to rule 34b–1 by the additional burden imposed by the amendments (.5). The total cost of the annul burden attributable to the amendments is calculated by multiplying the total burden hours (78.9) by the weighted average hourly rate of $64.

[110] 15 U.S.C. 77(b), 78c(f), and 80a–2(c).

34b–1 under the Act in the Proposing Release. The Commission prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 in conjunction with the Proposing Release, which was made available to the public. The Proposing Release summarized the IRFA and solicited comments on it. No comments specifically addressed the IRFA.

*A. Need for the Rule and Form Amendments*

As discussed above, taxes are one of the most significant costs of investing in mutual funds through taxable accounts. Despite the tax dollars at stake, many investors lack a clear understanding of the impact of taxes on their mutual fund investments.[111]

There have been increasing calls for improvement in the disclosure of the tax consequences of mutual fund investments. Mutual funds, as well as third party providers that furnish information to mutual fund shareholders, are responding to this growing investor demand by providing after-tax returns, calculators that investors can use to compute after-tax returns, and other tax information.[112] In addition, several fund groups have created new funds promoting the use of more tax-efficient portfolio management strategies.[113] Moreover, in April 2000, a bill that would require the Commission to revise its regulations to require improved disclosure of mutual fund after-tax returns was passed by the U.S. House of Representatives and was referred to the Senate.[114]

*B. Significant Issues Raised by Public Comment*

The Commission requested comment on the IRFA, but we received no comments specifically addressing the analysis. One commenter, however, argued that the proposed amendments would have a greater impact on smaller entities while another commenter suggested a longer phase-in period for smaller funds to comply with the new requirements. Neither of the commenters provided any specific or quantifiable data.

*C. Small Entities Subject to the Rule*

For purposes of the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[115] As of December 1999, there were approximately 2,900 investment companies registered on Form N–1A that may be affected by the proposed amendments.[116] Of these 2,900, approximately 150 are investment companies that meet the Commission's definition of small entity for purposes of the Investment Company Act.[117] The amendments that require funds to provide after-tax returns in registration statements, advertisements, and sales literature will affect those small entities.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The amendments will require all funds subject to the amendments to provide after-tax return information in their prospectuses. Although after-tax returns will not generally be required in fund advertisements and sales literature, any fund that either includes after-tax returns in these materials or includes other performance information together with representations that the fund is managed to limit taxes will be required to include after-tax returns computed according to our standardized formulas.

After assessing the amendments in light of the current reporting requirements and consulting with representatives in the industry, the Commission has considered the potential effect that the amendments will have on the preparation of registration statements, advertisements, and sales literature. The Commission estimates that, as a result of the amendments, it will take approximately 18 additional hours per portfolio to prepare the first post-effective amendment to the registration statement on Form N–1A that is required to include the proposed after-tax return disclosure.[118] The Commission believes that this estimate represents an initial, one-time burden and that the hour burden will be reduced for subsequent post-effective amendments. For purposes of calculating the rule 482 hour burden relating to advertisements, the Commission estimates that the proposed amendments will impose approximately .5 additional hours per portfolio.[119] The Commission also estimates that the proposed amendments will impose approximately .5 additional hours per response for sales literature subject to rule 34b–1.[120]

*E. Agency Action To Minimize Effects on Small Entities*

The Commission believes that special compliance or reporting requirements for small entities would not be appropriate or consistent with investor protection. The disclosure amendments we are adopting will give prospective and existing shareholders greater access to information about the after-tax returns of mutual funds. Different disclosure requirements for small entities, such as reducing the level of disclosure that small entities would have to provide, would create the risk that investors would not receive adequate information about a fund's after-tax returns or would receive confusing, false, or misleading information. In addition, investors would not be able to easily compare each fund when making an investment decision if there were no uniform disclosure standards for after-tax performance information applicable to all funds. The Commission believes it is important for prospective and existing shareholders to receive this information about after-tax returns for all funds, not just for funds that are not considered small entities.

Investors in small funds should have information about the funds' after-tax returns and would benefit from this information as much as investors in larger funds. If we do not require certain information for small entities, this could create the risk that investors in small funds might not receive important information about a fund's after-tax returns. The Commission also notes that current disclosure requirements in registration statements do not distinguish between small entities and other funds. In addition, the Commission believes it would be inappropriate to impose a different timetable on small entities for complying with the requirements because investors would not have the ability to compare the after-tax returns of all funds when making an investment decision.

Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with concerns for investor protection. Simplifying or otherwise

[111] *See supra* notes 2–6 and accompanying text.

[112] *See supra* note 10 and accompanying text.

[113] *See supra* note 11 and accompanying text.

[114] *See supra* note 12 and accompanying text.

[115] 17 CFR 270.0–10.

[116] This estimate is based on statistics compiled by the Commission's Division of Investment Management staff from January 1, 1999, through December 31, 1999.

[117] This estimate is based on statistics compiled by the Commission's Division of Investment Management staff from January 1, 1999, through December 31, 1999.

[118] This estimate is based on the staff's consultation with industry representatives. Since an investment company filing an initial registration statement on Form N–1A has no performance history to disclose, the proposed amendments would not affect such initial filings.

[119] This estimate is based on the staff's consultation with industry representatives.

[120] This estimate is based on the staff's consultation with industry representatives.

reducing the regulatory requirements of the proposals for small entities could undercut the purpose of these proposals: to emphasize to investors the impact of taxes on a fund's return and to enable investors to make effective comparisons among various fund performance claims. For the same reasons, using performance standards to specify the requirements for small entities also would not be appropriate.

We note, however, that in response to concerns expressed by certain commenters regarding the burdens imposed on funds by the new requirements, we have simplified the presentation of after-tax returns.[121] We have also extended the date by which all post-effective amendments that are annual updates to effective registration statements and profiles must comply with the amendments to Form N–1A from the proposed six-month period to February 15, 2002, which will provide funds an additional four months to comply with the amendments. Overall, these amendments will not adversely affect small entities. We believe that the burden on funds of computing and disclosing after-tax returns is justified by the benefits to investors from receiving this information. While we acknowledge that funds will incur a one-time cost to modify their systems to compute after-tax returns, the computation thereafter should be straightforward to perform using readily available data.

The FRFA is available for public inspection in File No. S7–23–99, and a copy may be obtained by contacting Peter M. Hong, Special Counsel, at (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

## VI. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), and the Commission has submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (i) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies''; (ii) ''Registration Statements—Regulation C'';[122] and (iii) ''Rule 34b–1 of the Investment Company Act of 1940, Sales Literature Deemed to Be Misleading.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.[123]

Form N–1A (OMB Control No. 3235–0307) was adopted pursuant to section 8(a) of the Investment Company Act (15 U.S.C. 80a–8) and section 5 of the Securities Act (15 U.S.C. 77e). Rule 30d–1 (OMB Control No. 3235–0025) was adopted pursuant to Section 30(e) of the Investment Company Act (15 U.S.C. 80a–2). Rule 482 of Regulation C (OMB Control No. 3235–0074) was adopted pursuant to section 10(b) of the Securities Act (15 U.S.C. 77j(b)). Rule 34b–1 (OMB Control No. 3235–0346) was adopted pursuant to section 34(b) of the Investment Company Act (15 U.S.C. 80a–33(b)).

As discussed above, the amendments will require a fund to disclose its standardized after-tax returns for 1-, 5-, and 10-year periods. After-tax return information is to be included in the risk/return summary of the prospectus. Funds are required to include a short, explanatory narrative adjacent to the performance table in the risk/return summary. After-tax returns, which will accompany before-tax returns in fund prospectuses, will be presented in two ways: (i) After taxes on fund distributions only; and (ii) after taxes on fund distributions and a redemption of fund shares. The before- and after-tax returns will be required to be presented in a standardized tabular format. Although after-tax returns will not generally be required in fund advertisements and sales literature, any fund that either includes after-tax returns in these materials or includes other performance information together with representations that the fund is managed to limit taxes will be required to include after-tax returns computed according to our standardized formulas.

The information required by the amendments is primarily for the use and benefit of investors. The Commission is concerned that mutual fund investors who are subject to current taxation may not fully appreciate the impact of taxes on their fund investments because mutual funds are currently required to report their performance on a before-tax basis only. Many investors consider performance one of the most significant factors when selecting or evaluating a fund, and we believe that requiring funds to disclose their after-tax performance would allow investors to make better-informed decisions. The information required to be filed with the Commission pursuant to the information collections also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

In the Proposing Release, the Commission estimated the burden hours that would be necessary for the collection of information requirements under the proposed amendments. Although no commenters specifically addressed the burden estimates for the collection of information requirements, a few commenters raised concerns regarding the costs involved in complying with the disclosure requirements of the amendments. These commenters, however, did not provide an estimate of the burden hours associated with the proposed rule changes. We continue to believe that the estimates of the burden hours contained in the Proposing Release are appropriate.[124]

[121] As discussed above, we have modified the proposal by: eliminating the proposed requirement to disclose pre-liquidation before-tax returns; eliminating after-tax returns in annual reports; streamlining the required narrative disclosure; and simplifying the presentation for funds that offer multiple classes in a single prospectus.

[122] The amendments modify rule 482, which is part of Regulation C under the Securities Act of 1933. Regulation C describes the disclosure that must appear in registration statements under the Securities Act and Investment Company Act. The PRA burden associated with rule 482, however, is included in the investment company registration statement form, not in Regulation C. In this case, the amendments to rule 482 will affect the burden hours for Form N–1A, the registration form for open-end investment companies that currently advertise pursuant to rule 482. We estimate that the burden associated with Regulation C will not change with the amendments to rule 482.

[123] As discussed above, we have modified the proposal by eliminating the proposed requirement to include after-tax returns in the MDFP, which is typically contained in the annual report. Accordingly, the hour burden for preparing and filing annual reports in compliance with rule 30d–1 will be reduced by 7.5 hours. *See* Proposing Release, *supra* note 1, at nn. 107–110, and accompanying text (discussing the estimated hour burden for proposal requiring after-tax return disclosure in shareholder reports). Funds will be required to include a statement in the MDFP that accompanies the performance table and graph to the effect that the returns shown do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of fund shares. Item 5(b)(2) of Form N–1A. We believe that the hour burden for the required statement in the MDFP will be negligible and will not result in a change to the current hour burden for preparing and filing annual reports.

[124] As discussed above, we have modified the proposal by: Eliminating the proposed requirement to disclose pre-liquidation before-tax returns; eliminating after-tax returns in annual reports; streamlining the required narrative disclosure; and simplifying the presentation for funds that offer multiple classes in a single prospectus. The elimination of after-tax returns in annual reports

Continued

*Form N–1A.* Form N–1A, including the amendments, contains collection of information requirements. The purpose of Form N–1A is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to enable funds to provide investors with information necessary to evaluate an investment in the fund. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A.

We estimate that 170 initial registration statements are filed annually on Form N–1A, registering 298 portfolios, and that the current hour burden per portfolio per filing is 824 hours, for a total annual hour burden of 245,552 hours.[125] We estimate that 4,500 post-effective amendments to registration statements are filed annually on Form N–1A, for 7,875 portfolios, and that the current hour burden per portfolio per post-effective amendment filing is 104 hours, for an annual burden of 819,000 hours.[126] Thus, we estimate a current total annual hour burden of 1,064,552 hours for the preparation and filing of Form N–1A and post-effective amendments on Form N–1A.

The proposed amendments will not affect the hour burden of an initial filing of a registration statement on Form N–1A since an investment company filing such an initial form will have no performance history to disclose. Post-effective amendments to such registration statements, however, will contain performance figures and thus be affected by the amendments. We estimate that the amendments will increase the hour burden per portfolio per filing of a post-effective amendment by 18 hours.[127] Of the 7,875 funds referenced in post-effective amendments, 1,040 are money market funds, which will be exempted from the after-tax return disclosure requirements. An additional 1,575 funds are used as investment vehicles for variable insurance contracts, which will be permitted to omit the after-tax information. Thus, approximately 5,260 of the 7,875 funds referenced in post-effective amendments will be affected by the proposed amendments.[128] The Commission estimates the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–1A will be 1,159,311 hours.[129]

Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements will not be kept confidential.

*Rule 482.* Rule 482, including the amendments, contains collection of information requirements. The rule permits a fund to advertise information the ''substance of which'' is contained in its statutory prospectus, subject to the requirements of the rule. Rule 482 limits performance information to standardized quotations of yield and total return and other measures of performance that reflect all elements of return.

The increased burden associated with the amendments to rule 482 is included in Form N–1A.[130] Thus, the amendments to rule 482 will affect the burden hours for Form N–1A, the registration form for open-end investment companies that currently may advertise pursuant to rule 482. As described above, there are approximately 5,260 funds filing post-effective amendments that will be affected by the proposed amendments. The Commission further estimates that three percent of these funds will elect to use advertisements or sales literature that either include after-tax returns or include other performance information together with representations that the fund is managed to limit or control the effect of taxes on performance and therefore be required to comply with the proposed amendments to rule 482.[131] We estimate that the additional hour burden required to comply with the proposed amendments to rule 482 is .5 hours.[132]

Compliance with rule 482 is mandatory for every registered fund that issues advertisements. Responses to the disclosure requirements will not be kept confidential.

*Rule 34b–1.* Rule 34b–1, including the amendments, contains collection of information requirements. The rule governs sales material that is accompanied or preceded by the delivery of a statutory prospectus and requires the inclusion of standardized performance data and certain legend disclosure in sales material that includes performance data.

We estimate that approximately 8,495 respondents file approximately 4.35 responses annually pursuant to rule 34b–1.[133] Of these respondents, we estimate that 1,040 are money market funds that will be exempt from the amendments and that an additional 620 funds and unit investment trusts (''UITs'') registered on Forms N–3 and N–4 will not be affected by the amendments. We estimate that an additional 1,575 funds registered on Form N–1A and subject to rule 34b–1 are used as underlying portfolios for variable insurance contracts and will not advertise after-tax returns or use

will reduce the hour burden for preparing and filing annual reports in compliance with rule 30d–1 by 7.5 hours. *See* Proposing Release, *supra* note 1, at nn. 107–110, and accompanying text (discussing the estimated hour burden for proposal requiring after-tax return disclosure in annual reports). We do not believe, however, that the other three modifications will affect the estimated burden hours overall.

[125] These estimates are based on filings received in calendar year 1999. The current approved hour burden per portfolio for an initial Form N–1A is 824 hours.

[126] These estimates are based on filings received in calendar year 1999. The current approved hour burden per portfolio for post-effective amendments to Form N–1A is 104 hours.

[127] This estimate is based on the staff's consultations with industry representatives.

[128] The number of funds referenced in post-effective amendments that will be affected by the amendments is computed by subtracting those funds that are exempt from or permitted to omit the after-tax return disclosure from the number of funds referenced in post-effective amendments (7,875 − 1,040 − 1,575, or 5,260). For purposes of our analysis, we have not excluded certain funds that also would be permitted to omit the after-tax return disclosure, such as funds that distribute prospectuses for use by investors in 401(k) plans or other similar tax-deferred arrangements. While these funds will be permitted to omit the after-tax return disclosure in prospectuses distributed to investors in these tax-deferred arrangements, they would still incur a burden from including the disclosure in prospectuses distributed to all other investors.

[129] This total annual hour burden is calculated by adding the total annual hour burden for initial registration statements and the total annual hour burden for post-effective amendments, including the additional burden imposed by the amendments. As explained, the hour burden per portfolio for an initial filing would remain at 824 hours, for a total burden of 245,552 hours. The hour burden per portfolio for a post-effective amendment will be 122 hours (104 + 18), with a burden of 104 hours imposed on all 7,875 portfolios (104 × 7,875, or 819,000) and the additional 18 hours affecting 5,260 portfolios (18 × 5,260, or 94,680). Moreover, since the burden associated with rule 482 is included in Form N–1A (as discussed in note 122, *supra*), the Form N–1A burden will include the estimated rule 482 burden of .5 hours (the rule 482 burden is discussed below) that will be imposed on the three percent of funds that we estimate would use advertisements or sales literature that either include after-tax returns or include other performance information together with representations that the fund is managed to limit or control the effect of taxes on performance (.5 × (5,260 × 3%), or 79). Thus, the total annual hour burden for all funds for the preparation and filing of initial registration statements and post-effective amendments on Form N–1A will be 1,159,311 hours (245,552 + 819,000 + 94,680 + 79).

[130] *See supra* note 122.

[131] This estimate is based on the assumption that tax-managed funds and index funds would be most likely to advertise after-tax performance or use advertisements that include other performance information together with representations that the fund is managed to limit or control the effect of taxes on performance.

[132] This estimate is based on the staff's consultations with industry representatives.

[133] These estimates are based on filings received in calendar year 1999. The current approved hour burden per response for rule 34b–1 is 2.4 hours.

advertisements that either include other performance information together with representations that the fund is managed to limit or control the effect of taxes on performance due to their unique tax-deferred nature. Thus, 5,260 respondents subject to rule 34b–1 will also be subject to the after-tax return disclosure.[134] We further estimate that three percent of respondents subject to rule 34b–1 will elect to use advertisements or sales literature that either include after-tax returns or include other performance information together with representations that the fund is managed to limit or control the effect of taxes on performance and therefore be subject to the proposed amendments.[135] The burden for rule 34b–1 requires approximately 2.4 hours per response resulting from creating the information required by rule 34b–1. We estimate that rule 34b–1 imposes a current total annual reporting burden of 88,800 hours on the industry.[136] We estimate that the additional hour burden required to comply with the proposed amendments to rule 34b–1 is .5 hours, for a total burden per response of 2.9 hours and a total annual burden on the industry of 89,143 hours.[137]

Compliance with rule 34b–1 is mandatory for every registered investment company that issues sales literature. Responses to the disclosure requirements will not be kept confidential.

## VII. Statutory Authority

The Commission is adopting amendments to Form N–1A pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77j, 77s(a)) and sections 8, 24(a), and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–24(a), 80a–37). The Commission is adopting amendments to rule 482 pursuant to authority set forth in sections 5, 10(b), and 19(a) of the Securities Act (15 U.S.C. 77e, 77j(b), and 77s(a)). The Commission is adopting amendments to rule 34b–1 pursuant to authority set forth in sections 34(b) and 38(a) of the Investment Company Act (15 U.S.C. 80a–33(b) and 80a–37(a)).

## List of Subjects

*17 CFR Part 230*

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 239*

Reporting and recordkeeping requirements, Securities.

*17 CFR Parts 270 and 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

## Text of Rules and Forms

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for part 230 is revised as follows:

**Authority:** 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.482 is amended by:

a. Removing ''; and'' at the end of paragraph (e)(3)(iv) and in its place adding a period;

b. Redesignating paragraph (e)(4) as paragraph (e)(5) and paragraph (f) as paragraph (g);

c. Adding new paragraphs (e)(4) and (f); and

d. Revising newly redesignated paragraph (e)(5) to read as follows:

### § 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(e) * * *

(4) For an open-end management investment company, average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) for one, five, and ten year periods; *Provided,* That if the company's registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed; and *Provided further,* That such quotations:

(i) Are based on the methods of computation prescribed in Form N–1A;

(ii) Are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Are accompanied by quotations of total return as provided for in paragraph (e)(3) of this section;

(iv) Include both average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption);

(v) Are set out with equal prominence and are set out in no greater prominence than the required quotations of total return; and

(vi) Identify the length of and the last day of the one, five, and ten year periods; and

(5) Any other historical measure of company performance (not subject to any prescribed method of computation) if such measurement:

(i) Reflects all elements of return;

(ii) Is accompanied by quotations of total return as provided for in paragraph (e)(3) of this section;

(iii) In the case of any measure of performance adjusted to reflect the effect of taxes, is accompanied by quotations of total return as provided for in paragraph (e)(4) of this section;

(iv) Is set out in no greater prominence than the required quotations of total return; and

(v) Identifies the length of and the last day of the period for which performance is measured.

(f) An advertisement for an open-end management investment company (other than a company that is permitted under § 270.35d–1(a)(4) of this chapter to use a name suggesting that the company's distributions are exempt from federal income tax or from both federal and state income tax) that represents or implies that the company is managed to limit or control the effect of taxes on company performance shall accompany any quotation of the company's performance permitted by paragraph (e) of this section with quotations of total return as provided for in paragraph (e)(4) of this section.

* * * * *

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The authority citation for part 270 continues to read in part as follows:

---

[134] This number is computed by subtracting from the number of respondents filing rule 34b–1 sales material the number of money market funds, the number of funds and UITs registered on Forms N–3 and N–4, and the number of funds used as underlying portfolios for variable insurance contracts (8,495 − 1,040 − 620 − 1,575, or 5,260).

[135] This estimate is based on the assumption that tax-managed funds and index funds would be most likely to advertise after-tax performance or use advertisements that include other performance information together with representations that the fund is managed to limit or control the effect of taxes on performance.

[136] The current total annual hour burden is computed by multiplying the number of responses filed annually under rule 34b–1 by the current hour burden (37,000 × 2.4). The total annual hour burden for the industry has increased significantly from previous estimates because we have reevaluated the number of respondents subject to rule 34b–1.

[137] The total annual burden is computed by adding the current burden (2.4 × 37,000, or 88,800) to the additional burden imposed by the proposed amendments (.5 × (8,495 − 1,040 − 620 − 1,575) × 4.35 × 3%, or 343).

**Authority:** 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

4. Section 270.34b–1 is amended by:

a. Redesignating paragraphs (b)(1)(iii)(B) and (C) as paragraphs (b)(1)(iii)(D) and (E);

b. Adding new paragraphs (b)(1)(iii)(B) and (C); and

c. Revising paragraph (b)(3) before the note to read as follows:

**§ 270.34b–1 Sales literature deemed to be misleading.**

* * * * *

(b)(1) * * *

(iii) * * *

(B) Accompany any quotation of performance adjusted to reflect the effect of taxes (not including a quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the company) with the quotations of total return specified by paragraph (e)(4) of § 230.482 of this chapter;

(C) If the sales literature (other than sales literature for a company that is permitted under § 270.35d–1(a)(4) to use a name suggesting that the company's distributions are exempt from federal income tax or from both federal and state income tax) represents or implies that the company is managed to limit or control the effect of taxes on company performance, include the quotations of total return specified by paragraph (e)(4) of § 230.482 of this chapter;

* * * * *

(3) The requirements specified in paragraph (b)(1) of this section shall not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act (15 U.S.C. 80a–29) containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor shall the requirements of paragraphs (e)(3)(ii), (e)(4)(ii), and (g) of § 230.482 of this chapter apply to any such periodic report containing any other performance data.

* * * * *

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for part 239 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

6. The authority citation for part 274 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

**Note:** The text of Form N–1A does not and these amendments will not appear in the *Code of Federal Regulations.*

7. General Instruction C to Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding paragraphs 3.(d)(iii) and (iv) to read as follows:

**Form N–1A**

* * * * *

**General Instructions**

* * * * *

**C. Preparation of the Registration Statement**

* * * * *

**3. Additional Matters**

* * * * *

(d) * * *

(iii) A Fund may omit the information required by Items 2(c)(2)(iii)(B) and (C) and 2(c)(2)(iv) if the Fund's prospectus will be used exclusively to offer Fund shares as investment options for one or more of the following:

(A) a defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), a tax-deferred arrangement under section 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) or 457), a variable contract as defined in section 817(d) of the Internal Revenue Code (26 U.S.C. 817(d)), or a similar plan or arrangement pursuant to which an investor is not taxed on his or her investment in the Fund until the investment is sold; or

(B) persons that are not subject to the federal income tax imposed under section 1 of the Internal Revenue Code (26 U.S.C. 1), or any successor to that section.

(iv) A Fund that omits information under Instruction (d)(iii) may alter the legend required on the back cover page by Item 1(b)(1) to state, as applicable, that the prospectus is intended for use in connection with a defined contribution plan, tax-deferred arrangement, variable contract, or similar plan or arrangement, or persons described in Instruction (d)(iii)(B).

* * * * *

8. Item 2 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Revising paragraphs (c)(2)(i) and (c)(2)(iii);

b. Adding paragraph (c)(2)(iv);

c. Revising paragraph (a) of Instruction 2;

d. Adding paragraph (e) to Instruction 2; and

e. Revising paragraph (c) of Instruction 3 to read as follows:

**Form N–1A**

* * * * *

**Item 2. Risk/Return Summary: Investments, Risks, and Performance**

* * * * *

(c) * * *

(2) * * *

(i) Include the bar chart and table required by paragraphs (c)(2)(ii) and (iii) of this section. Provide a brief explanation of how the information illustrates the variability of the Fund's returns (*e.g.,* by stating that the information provides some indication of the risks of investing in the Fund by showing changes in the Fund's performance from year to year and by showing how the Fund's average annual returns for 1, 5, and 10 years compare with those of a broad measure of market performance). Provide a statement to the effect that the Fund's past performance (before and after taxes) is not necessarily an indication of how the Fund will perform in the future.

* * * * *

(iii) If the Fund has annual returns for at least one calendar year, provide a table showing the Fund's (A) average annual total return; (B) average annual total return (after taxes on distributions); and (C) average annual total return (after taxes on distributions and redemption). A Money Market Fund should show only the returns described in clause (A) of the preceding sentence. All returns should be shown for 1-, 5-, and 10-calendar year periods ending on the date of the most recently completed calendar year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. The table also should show the returns of an appropriate broad-based securities market index as defined in Instruction 5 to Item 5(b) for the same periods. A Fund that has been in existence for more than 10 years also may include returns for the life of the Fund. A Money Market Fund may provide the Fund's 7-day yield ending on the date of the most recent calendar year or disclose a toll-free (or collect) telephone number that investors can use to obtain

the Fund's current 7-day yield. For a Fund (other than a Money Market Fund or a Fund described in General Instruction C.3.(d)(iii)), provide the information in the following table with the specified captions:

AVERAGE ANNUAL TOTAL RETURNS

[For the periods ended December 31,———]

| | 1 year | 5 years [or life of fund] | 10 years [or life of fund] |
|---|---|---|---|
| Return Before Taxes | 111% | 111% | 111% |
| Return After Taxes on Distributions | 111% | 111% | 111% |
| Return After Taxes on Distributions and Sale of Fund Shares | 111% | 111% | 111% |
| Index (reflects no deduction for [fees, expenses, or taxes]) | 111% | 111% | 111% |

(iv) Adjacent to the table required by paragraph 2(c)(2)(iii), provide a brief explanation that:

(A) After-tax returns are calculated using the historical highest individual federal marginal income tax rates and do not reflect the impact of state and local taxes;

(B) Actual after-tax returns depend on an investor's tax situation and may differ from those shown, and after-tax returns shown are not relevant to investors who hold their Fund shares through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts;

(C) If the Fund is a Multiple Class Fund that offers more than one Class in the prospectus, after-tax returns are shown for only one Class and after-tax returns for other Classes will vary; and

(D) If average annual total return (after taxes on distributions and redemption) is higher than average annual total return, the reason for this result may be explained.

*Instructions.*

* * * * *

2. *Table.*

(a) Calculate a Money Market Fund's 7-day yield under Item 21(a); the Fund's average annual total return under Item 21(b)(1); and the Fund's average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) under Items 21(b)(2) and (3), respectively.

* * * * *

(e) Returns required by paragraphs 2(c)(2)(iii)(A), (B), and (C) for a Fund or Series must be adjacent to one another and appear in that order. When more than one Fund or Series is offered in the prospectus, do not intersperse returns of one Fund or Series with returns of another Fund or Series. The returns for a broad-based securities market index, as required by paragraph 2(c)(2)(iii), must precede or follow all of the returns for a Fund or Series rather than be interspersed with the returns of the Fund or Series.

* * * * *

3. *Multiple Class Funds.*

* * * * *

(c) When a Multiple Class Fund offers more than one Class in the prospectus:

(i) Provide the returns required by paragraph 2(c)(2)(iii)(A) of this Item for each Class offered in the prospectus;

(ii) Provide the returns required by paragraphs 2(c)(2)(iii)(B) and (C) of this Item for only one of those Classes. The Fund may select the Class for which it provides the returns required by paragraphs 2(c)(2)(iii)(B) and (C) of this Item, provided that the Fund:

(A) Selects a Class that has been offered for use as an investment option for accounts other than those described in General Instruction C.3.(d)(iii)(A);

(B) Selects a Class described in paragraph (c)(ii)(A) of this instruction with 10 or more years of annual returns if other Classes described in paragraph (c)(ii)(A) of this instruction have fewer than 10 years of annual returns;

(C) Selects the Class described in paragraph (c)(ii)(A) of this instruction with the longest period of annual returns if the Classes described in paragraph (c)(ii)(A) of this instruction all have fewer than 10 years of returns; and

(D) If the Fund provides the returns required by paragraphs 2(c)(2)(iii)(B) and (C) of this Item for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the table the reasons for the selection of a different Class;

(iii) The returns required by paragraphs 2(c)(2)(iii)(A), (B), and (C) of this Item for the Class described in paragraph (c)(ii) of this instruction should be adjacent and should not be interspersed with the returns of other Classes; and

(iv) All returns shown should be identified by Class.

* * * * *

9. Item 5 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by revising paragraph (b)(2) to read as follows:

**Form N–1A**

* * * * *

**Item 5. Management's Discussion of Fund Performance**

* * * * *

(b)(1) * * *

(2) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Average annual total returns should be computed in accordance with Item 21(b)(1). Include a statement accompanying the graph and table to the effect that past performance does not predict future performance and that the graph and table do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of fund shares.

* * * * *

10. Item 21 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Revising the phrase ''(b)(1)–(4)'' to read ''(b)(1)–(6)'' in the introductory text of paragraph (b);

b. Redesignating paragraphs (b)(2), (3), (4), and (5) as paragraphs (b)(4), (5), (6), and (7), respectively;

c. Adding new paragraphs (b)(2) and (b)(3); and

d. Revising paragraph (b)(1) to read as follows:

**Form N–1A**

* * * * *

**Item 21. Calculation of Performance Data**

* * * * *

(b) * * *

(1) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual

total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$P(1+T)^n=ERV$

Where:

P=a hypothetical initial payment of $1,000.
T=average annual total return.
n=number of years.
ERV=ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).

*Instructions.* 1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

4. Determine the ending redeemable value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

5. State the average annual total return quotation to the nearest hundredth of one percent.

6. Total return information in the prospectus need only be current to the end of the Fund's most recent fiscal year.

(2) *Average Annual Total Return (After Taxes on Distributions) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return (after taxes on distributions) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending value, according to the following formula:

$P(1+T)^n=ATV_D$

Where:

P=a hypothetical initial payment of $1,000.
T=average annual total return (after taxes on distributions).
n=number of years.
$ATV_D$=ending value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion), after taxes on fund distributions but not after taxes on redemption.

*Instructions.* 1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Calculate the taxes due on any distributions by the Fund by applying the tax rates specified in Instruction 4 to each component of the distributions on the reinvestment date (*e.g.,* ordinary income, short-term capital gain, long-term capital gain). The taxable amount and tax character of each distribution should be as specified by the Fund on the dividend declaration date, but may be adjusted to reflect subsequent recharacterizations of distributions. Distributions should be adjusted to reflect the federal tax impact the distribution would have on an individual taxpayer on the reinvestment date. For example, assume no taxes are due on the portion of any distribution that would not result in federal income tax on an individual, *e.g.,* tax-exempt interest or non-taxable returns of capital. The effect of applicable tax credits, such as the foreign tax credit, should be taken into account in accordance with federal tax law.

4. Calculate the taxes due using the highest individual marginal federal income tax rates in effect on the reinvestment date. The rates used should correspond to the tax character of each component of the distributions (*e.g.,* ordinary income rate for ordinary income distributions, short-term capital gain rate for short-term capital gain distributions, long-term capital gain rate for long-term capital gain distributions). Note that the required tax rates may vary over the measurement period. Disregard any potential tax liabilities other than federal tax liabilities (*e.g.,* state and local taxes); the effect of phaseouts of certain exemptions, deductions, and credits at various income levels; and the impact of the federal alternative minimum tax.

5. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Assume that no additional taxes or tax credits result from any redemption of shares required to pay such fees. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

6. Determine the ending value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus. Assume that the redemption has no tax consequences.

7. State the average annual total return (after taxes on distributions) quotation to the nearest hundredth of one percent.

(3) *Average Annual Total Return (After Taxes on Distributions and Redemption) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return (after taxes on distributions and redemption) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending value, according to the following formula:

$P(1+T)^n=ATV_{DR}$

Where:

P=a hypothetical initial payment of $1,000.
T=average annual total return (after taxes on distributions and redemption).
n=number of years.
$ATV_{DR}$=ending value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional

portion), after taxes on fund distributions and redemption.

*Instructions.* 1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Calculate the taxes due on any distributions by the Fund by applying the tax rates specified in Instruction 4 to each component of the distributions on the reinvestment date (*e.g.,* ordinary income, short-term capital gain, long-term capital gain). The taxable amount and tax character of each distribution should be as specified by the Fund on the dividend declaration date, but may be adjusted to reflect subsequent recharacterizations of distributions. Distributions should be adjusted to reflect the federal tax impact the distribution would have on an individual taxpayer on the reinvestment date. For example, assume no taxes are due on the portion of any distribution that would not result in federal income tax on an individual, *e.g.,* tax-exempt interest or non-taxable returns of capital. The effect of applicable tax credits, such as the foreign tax credit, should be taken into account in accordance with federal tax law.

4. Calculate the taxes due using the highest individual marginal federal income tax rates in effect on the reinvestment date. The rates used should correspond to the tax character of each component of the distributions (*e.g.,* ordinary income rate for ordinary income distributions, short-term capital gain rate for short-term capital gain distributions, long-term capital gain rate for long-term capital gain distributions). Note that the required tax rates may vary over the measurement period. Disregard any potential tax liabilities other than federal tax liabilities (*e.g.,* state and local taxes); the effect of phaseouts of certain exemptions, deductions, and credits at various income levels; and the impact of the federal alternative minimum tax.

5. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Assume that no additional taxes or tax credits result from any redemption of shares required to pay such fees. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

6. Determine the ending value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

7. Determine the ending value by subtracting capital gains taxes resulting from the redemption and adding the tax benefit from capital losses resulting from the redemption.

(a) Calculate the capital gain or loss upon redemption by subtracting the tax basis from the redemption proceeds (after deducting any nonrecurring charges as specified by Instruction 6).

(b) The Fund should separately track the basis of shares acquired through the $1,000 initial investment and each subsequent purchase through reinvested distributions. In determining the basis for a reinvested distribution, include the distribution net of taxes assumed paid from the distribution, but not net of any sales loads imposed upon reinvestment. Tax basis should be adjusted for any distributions representing returns of capital and any other tax basis adjustments that would apply to an individual taxpayer, as permitted by applicable federal tax law.

(c) The amount and character (*e.g.,* short-term or long-term) of capital gain or loss upon redemption should be separately determined for shares acquired through the $1,000 initial investment and each subsequent purchase through reinvested distributions. The Fund should not assume that shares acquired through reinvestment of distributions have the same holding period as the initial $1,000 investment. The tax character should be determined by the length of the measurement period in the case of the initial $1,000 investment and the length of the period between reinvestment and the end of the measurement period in the case of reinvested distributions.

(d) Calculate the capital gains taxes (or the benefit resulting from tax losses) using the highest federal individual capital gains tax rate for gains of the appropriate character in effect on the redemption date and in accordance with federal tax law applicable on the redemption date. For example, applicable federal tax law should be used to determine whether and how gains and losses from the sale of shares with different holding periods should be netted, as well as the tax character (*e.g.,* short-term or long-term) of any resulting gains or losses. Assume that a shareholder has sufficient capital gains of the same character from other investments to offset any capital losses from the redemption so that the taxpayer may deduct the capital losses in full.

8. State the average annual total return (after taxes on distributions and redemption) quotation to the nearest hundredth of one percent.

* * * * *

By the Commission.

Dated: January 18, 2001.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–2063 Filed 2–2–01; 8:45 am]

BILLING CODE 8010–01–U

Federal Register

Monday,
February 5, 2001

# Part III

# The President

## Proclamation 7404—National African American History Month, 2001

Federal Register
Vol. 66, No. 24
Monday, February 5, 2001

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7404 of February 1, 2001**

## National African American History Month, 2001

**By the President of the United States of America**

**A Proclamation**

In 1915, Carter Godwin Woodson, the father of Black history, founded the Association for the Study of African-American Life and History. Each February, the Association proposes a theme to guide the celebration of National African American History Month. For this year, the Association has chosen ''Creating and Defining the African-American Community: Family, Church, Politics, and Culture.''

This month in particular, we remember the stories of those who have helped to build our Nation and advance the cause of freedom and civil rights. We remember the bravery of the soldiers of the 54th Massachusetts Infantry Regiment and the sailors of the USS MASON in service to our country. We remember those who marched on Washington, sat at whites-only lunch counters, and walked rather than use segregated buses. And we remember those, known only to each of us, who helped to build our families, places of worship, and communities.

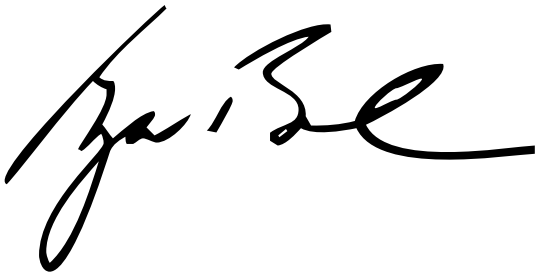
When we examine our Nation's history, we discover these and countless other stories that inspire us. They are stories of the triumph of the human spirit, tragic stories of cruelty rooted in ignorance and bigotry, yet stories of everyday people rising above their circumstances and the prejudice of others to build lives of dignity.

This month, and throughout the year, let us celebrate and remember these stories, which reflect the history of African Americans and all Americans. We can all enjoy the works of writers like Paul Laurence Dunbar, James Weldon Johnson, Zora Neale Hurston, and Langston Hughes. In our Nation's schools, our children can learn to admire Booker T. Washington, Sojourner Truth, Frederick Douglass, and others. And Americans from all backgrounds can be ennobled by the examples of Thurgood Marshall, Roy Wilkins, Whitney Young, Mary Church Terrell, and other civil rights leaders.

As we celebrate African American History Month, let us commit ourselves to raising awareness and appreciation of African American history. Let us teach our children, and all Americans, to rise above brutality and bigotry and to be champions of liberty, human dignity, and equality. And let us rededicate ourselves to affirming the promise of our Constitution.

NOW, THEREFORE, I, GEORGE W. BUSH, 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 February 2001 as National African American History Month. I call upon public officials, educators, librarians, and all of the people of the United States to observe this month with appropriate ceremonies, activities, and programs.

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



[FR Doc. 01–3163
Filed 2–2–01; 12:16 pm]
Billing code 3195–01–P

# Reader Aids

**Federal Register**

Vol. 66, No. 24

Monday, February 5, 2001

## CUSTOMER SERVICE AND INFORMATION

**Federal Register/Code of Federal Regulations**

| | |
|---|---|
| General Information, indexes and other finding aids | **202–523–5227** |
| **Laws** | **523–5227** |
| **Presidential Documents** | |
| Executive orders and proclamations | **523–5227** |
| **The United States Government Manual** | **523–5227** |
| **Other Services** | |
| Electronic and on-line services (voice) | **523–4534** |
| Privacy Act Compilation | **523–3187** |
| Public Laws Update Service (numbers, dates, etc.) | **523–6641** |
| TTY for the deaf-and-hard-of-hearing | **523–5229** |

## ELECTRONIC RESEARCH

**World Wide Web**

Full text of the daily Federal Register, CFR and other publications:

**http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

**http://www.nara.gov/fedreg**

**E-mail**

**PENS** (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

**listserv@listserv.gsa.gov**

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to:

**info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, FEBRUARY

8501–8742 ..... 1
8743–8884 ..... 2
8885–9026 ..... 5

## CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Administrative Orders:**
Presidential Determinations:
No. 2001-10 of January 17, 2001 ..... 8501
No. 2001-11 of January 19, 2001 ..... 8502
**Proclamations:**
7404 ..... 9025

**5 CFR**

3101 ..... 8505

**7 CFR**

246 ..... 8885
271 ..... 8885
272 ..... 8886
273 ..... 8886
278 ..... 8885
770 ..... 8886
1823 ..... 8886
1902 ..... 8886
1951 ..... 8886
1956 ..... 8886

**8 CFR**

212 ..... 8743

**9 CFR**

2 ..... 8743
3 ..... 8744
93 ..... 8887

**10 CFR**

430 ..... 8744, 8745
431 ..... 8745
490 ..... 8746
719 ..... 8746
830 ..... 8746
1040 ..... 8747
1042 ..... 8747
1044 ..... 8747

**12 CFR**

30 ..... 8616
208 ..... 8616, 8748
211 ..... 8616
225 ..... 8616
263 ..... 8616
308 ..... 8616
364 ..... 8616
568 ..... 8616
570 ..... 8616
1501 ..... 8748

**14 CFR**

39 ..... 8507, 8750, 8752, 8754, 8756, 8759
**Proposed Rules:**
71 ..... 8772, 8773

**16 CFR**

2 ..... 8721
801 ..... 8680
802 ..... 8680
803 ..... 8680
**Proposed Rules:**
801 ..... 8723
802 ..... 8723

**17 CFR**

201 ..... 8761
230 ..... 8887, 9002
232 ..... 8764
239 ..... 9002
270 ..... 8509, 9002
274 ..... 9002
**Proposed Rules:**
228 ..... 8732
229 ..... 8732
240 ..... 8732, 8912
249 ..... 8732, 8912

**19 CFR**

10 ..... 8765
12 ..... 8765
19 ..... 8765
103 ..... 8765
111 ..... 8765
112 ..... 8765
143 ..... 8765
146 ..... 8765
178 ..... 8765
191 ..... 8765
**Proposed Rules:**
24 ..... 8554
101 ..... 8554

**20 CFR**

404 ..... 8768

**24 CFR**

903 ..... 8897

**25 CFR**

103 ..... 8898
115 ..... 8768
151 ..... 8899

**26 CFR**

**Proposed Rules:**
1 ..... 8614
31 ..... 8614
35 ..... 8614
36 ..... 8614
40 ..... 8614
301 ..... 8614
601 ..... 8614

**27 CFR**

170 ..... 8768
**Proposed Rules:**
9 ..... 8925

**34 CFR**

300 ..... 8770
361 ..... 8770
606 ..... 8519

**36 CFR**

294 ..... 8899

**40 CFR**

**Proposed Rules:**
1610 ..... 8926

**42 CFR**

411 ..... 8771
424 ..... 8771

**47 CFR**

51 ..... 8519
73 ..... 8520
79 ..... 8521
90 ..... 8899
**Proposed Rules:**
51 ..... 8556
73 ..... 8557, 8558, 8559, 8560
100 ..... 8774

**48 CFR**

931 ..... 8746
970 ..... 8746
**Proposed Rules:**
904 ..... 8560
952 ..... 8560
970 ..... 8560

**49 CFR**

171 ..... 8644
172 ..... 8644
173 ..... 8644
176 ..... 8644

**50 CFR**

17 ..... 8530, 8650, 8850
635 ..... 8903
648 ..... 8904
697 ..... 89806
**Proposed Rules:**
622 ..... 8567
648 ..... 8560

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT FEBRUARY 5, 2001

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog; published 2-5-01

Marine mammals:

Incidental taking—

North Pacific Acoustic Laboratory; low frequency sound source operation; published 12-22-00

**COMMERCE DEPARTMENT**

**Patent and Trademark Office**

Patent cases:

American Inventors Protection Act; implementation—

Inter partes reexamination proceedings, optional; published 12-7-00

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollution; standards of performance for new stationary sources:

Small municipal waste combustion units—

New source performance standards; published 12-6-00

Air quality implementation plans; approval and promulgation; various States:

Arizona; published 1-4-01

**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:

Arizona; published 12-28-00

Oklahoma; published 12-28-00

**NUCLEAR REGULATORY COMMISSION**

Nondiscrimination on basis of sex in federally assisted education programs or activities; Federal financial assistance covered by Title IX; published 1-4-01

**SECURITIES AND EXCHANGE COMMISSION**

Securities, etc.:

Auditor independence requirements; published 12-5-00

**STATE DEPARTMENT**

Visas; nonimmigrant documentation:

Aliens ineligible to transit without visas; new list of countries; published 1-5-01

**TRANSPORTATION DEPARTMENT**

**Federal Transit Administration**

Major capital investment projects; published 12-7-00

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Cranberries grown in—

Massachusetts et al.; comments due by 2-12-01; published 1-12-01

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:

Rinderpest and foot-and-mouth disease; disease status change—

Uruguay; comments due by 2-12-01; published 12-13-00

**DEFENSE DEPARTMENT**

Acquisition regulations:

Ball and roller bearings and vessel propellers; domestic source restrictions; comments due by 2-12-01; published 12-13-00

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Electric utilities (Federal Power Act):

Open Access Same-Time Information System (OASIS) Phase II; comments due by 2-15-01; published 7-26-00

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:

Federal-State Joint Board on Universal Service—

Children's Internet Protection Act; implmentation; comments due by 2-15-01; published 1-31-01

**FEDERAL RESERVE SYSTEM**

Bank holding companies and change in bank control (Regulation Y):

Financial data processing activities, change in conditions that govern conduct; and financial holding companies allowed to own data storage companies; comments due by 2-16-01; published 12-21-00

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Biological products:

Blood and blood components—

Current good manufacturing practice; consignees and transfusion recipients notified of increased risk of HCV infection transmission ("lookback"); comments due by 2-14-01; published 11-16-00

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Inspector General Office, Health and Human Services Department**

Medicare and State health care programs:

Safe harbor provisions and special fraud alerts; intent to develop regulations; comments due by 2-12-01; published 12-14-00

**INTERIOR DEPARTMENT**

**Land Management Bureau**

Minerals management:

Fee changes; comments due by 2-13-01; published 12-15-00

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:

Critical habitat designations—

Various plants from Maui and Kahoolawe, HI; comments due by 2-16-01; published 12-18-00

Sacramento splittail; comments due by 2-12-01; published 1-12-01

Western sage grouse (Washington population); status review; comments due by 2-16-01; published 1-9-01

**INTERIOR DEPARTMENT**

**Minerals Management Service**

Outer Continential Shelf; oil, gas, and sulphur operations:

Affected State; definition removed; comments due by 2-13-01; published 12-15-00

**INTERIOR DEPARTMENT**

**National Park Service**

Historic properties leasing regulations; comments due by 2-12-01; published 12-12-00

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Indiana; comments due by 2-12-01; published 1-11-01

West Virginia; comments due by 2-12-01; published 1-12-01

**OFFICE OF MANAGEMENT AND BUDGET**

**Management and Budget Office**

Prompt Payment Act; implementation:

Interest penalties under cost-reimbursement contract for services more than 30 days after receiving proper invoice; comments due by 2-13-01; published 12-15-00

**SECURITIES AND EXCHANGE COMMISSION**

Securities:

Acquisition exemption during existence of an Underwriting or Selling Syndicate; comments due by 2-15-01; published 12-6-00

**STATE DEPARTMENT**

Consular services; fee schedule; comments due by 2-12-01; published 12-14-00

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Ports and waterways safety:

New York Harbor et al., NY; safety zone; comments due by 2-12-01; published 12-13-00

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Air traffic operating and flight rules, etc.:

Reduced vertical separation minimum; comments due

by 2-16-01; published 12-18-00

Airworthiness directives:

Bell; comments due by 2-12-01; published 12-13-00

Boeing; comments due by 2-12-01; published 12-29-00

Cessna; comments due by 2-12-01; published 1-8-01

Empresa Brasileira de Aeronautica S.A.; comments due by 2-12-01; published 1-16-01

Fokker; comments due by 2-15-01; published 1-16-01

Pratt & Whitney; comments due by 2-12-01; published 12-12-00

Rolls-Royce Corp.; comments due by 2-12-01; published 12-12-00

Rolls-Royce plc; comments due by 2-12-01; published 12-13-00

Saab; comments due by 2-15-01; published 1-16-01

Standard provisions added and part revised; comments due by 2-12-01; published 1-12-01

Stemme GmbH & Co.; comments due by 2-15-01; published 1-10-01

Airworthiness standards:

Transport category airplanes—

Airplane operating limitations and content of airplace flight manuals; revisions; FAR/JAR harmonization actions; comments due by 2-16-01; published 12-18-00

Braking systems; harmonization with European standards; comments due by 2-16-01; published 12-18-00

Class E airspace; comments due by 2-12-01; published 12-28-00

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Fuel system integrity; comments due by 2-12-01; published 12-15-00

**TREASURY DEPARTMENT**

**Customs Service**

Financial and accounting procedure:

Harbor Maintenance Fee refunds and other claims against Customs; time limitation; comments due by 2-13-01; published 12-15-00

Inspection, search, and seizure:

Civil asset forfeiture; comments due by 2-12-01; published 12-14-00

**TREASURY DEPARTMENT**

**Foreign Assets Control Office**

Russian Federation assets control regulations:

Highly enriched uranium; comments due by 2-12-01; published 1-12-01

Sudanese and Taliban (Afghanistan) sanctions regulations; reporting and procedures regulations; registration of nongovernmental organizations; comments due by 2-12-01; published 1-11-01

## LIST OF PUBLIC LAWS

**Note:** The List of Public Laws for the 106th Congress, Second Session has been completed and will resume when bills are enacted into public law during the next session of Congress.

A cumulative List of Public Laws was published in Part II of the **Federal Register** on January 16, 2001.

## Public Laws Electronic Notification Service (PENS)

**Note:** PENS will resume service when bills are enacted into law during the next session of Congress.

This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| **1, 2 (2** Reserved) | (869–038–00001–3) | 6.50 | Apr. 1, 2000 |
| **3** (1997 Compilation and Parts 100 and 101) | (869–042–00002–1) | 22.00 | [1] Jan. 1, 2000 |
| **4** | (869–042–00003–0) | 8.50 | Jan. 1, 2000 |
| **5 Parts:** | | | |
| 1–699 | (869–042–00004–8) | 43.00 | Jan. 1, 2000 |
| 700–1199 | (869–042–00005–6) | 31.00 | Jan. 1, 2000 |
| 1200–End, 6 (6 Reserved) | (869–042–00006–4) | 48.00 | Jan. 1, 2000 |
| **7 Parts:** | | | |
| 1–26 | (869–042–00007–2) | 28.00 | Jan. 1, 2000 |
| 27–52 | (869–042–00008–1) | 35.00 | Jan. 1, 2000 |
| 53–209 | (869–042–00009–9) | 22.00 | Jan. 1, 2000 |
| 210–299 | (869–042–00010–2) | 54.00 | Jan. 1, 2000 |
| 300–399 | (869–042–00011–1) | 29.00 | Jan. 1, 2000 |
| 400–699 | (869–042–00012–9) | 41.00 | Jan. 1, 2000 |
| 700–899 | (869–042–00013–7) | 37.00 | Jan. 1, 2000 |
| 900–999 | (869–042–00014–5) | 46.00 | Jan. 1, 2000 |
| 1000–1199 | (869–042–00015–3) | 18.00 | Jan. 1, 2000 |
| 1200–1599 | (869–042–00016–1) | 44.00 | Jan. 1, 2000 |
| 1600–1899 | (869–042–00017–0) | 61.00 | Jan. 1, 2000 |
| 1900–1939 | (869–042–00018–8) | 21.00 | Jan. 1, 2000 |
| 1940–1949 | (869–042–00019–6) | 37.00 | Jan. 1, 2000 |
| 1950–1999 | (869–042–00020–0) | 38.00 | Jan. 1, 2000 |
| 2000–End | (869–042–00021–8) | 31.00 | Jan. 1, 2000 |
| **8** | (869–042–00022–6) | 41.00 | Jan. 1, 2000 |
| **9 Parts:** | | | |
| 1–199 | (869–042–00023–4) | 46.00 | Jan. 1, 2000 |
| 200–End | (869–042–00024–2) | 44.00 | Jan. 1, 2000 |
| **10 Parts:** | | | |
| 1–50 | (869–042–00025–1) | 46.00 | Jan. 1, 2000 |
| 51–199 | (869–042–00026–9) | 38.00 | Jan. 1, 2000 |
| 200–499 | (869–042–00027–7) | 38.00 | Jan. 1, 2000 |
| 500–End | (869–042–00028–5) | 48.00 | Jan. 1, 2000 |
| **11** | (869–042–00029–3) | 23.00 | Jan. 1, 2000 |
| **12 Parts:** | | | |
| 1–199 | (869–042–00030–7) | 18.00 | Jan. 1, 2000 |
| 200–219 | (869–042–00031–5) | 22.00 | Jan. 1, 2000 |
| 220–299 | (869–042–00032–3) | 45.00 | Jan. 1, 2000 |
| 300–499 | (869–042–00033–1) | 29.00 | Jan. 1, 2000 |
| 500–599 | (869–042–00034–0) | 26.00 | Jan. 1, 2000 |
| 600–End | (869–042–00035–8) | 53.00 | Jan. 1, 2000 |
| **13** | (869–042–00036–6) | 35.00 | Jan. 1, 2000 |
| **14 Parts:** | | | |
| 1–59 | (869–042–00037–4) | 58.00 | Jan. 1, 2000 |
| 60–139 | (869–042–00038–2) | 46.00 | Jan. 1, 2000 |
| 140–199 | (869–038–00039–1) | 17.00 | [4] Jan. 1, 2000 |
| 200–1199 | (869–042–00040–4) | 29.00 | Jan. 1, 2000 |
| 1200–End | (869–042–00041–2) | 25.00 | Jan. 1, 2000 |
| **15 Parts:** | | | |
| 0–299 | (869–042–00042–1) | 28.00 | Jan. 1, 2000 |
| 300–799 | (869–042–00043–9) | 45.00 | Jan. 1, 2000 |
| 800–End | (869–042–00044–7) | 26.00 | Jan. 1, 2000 |
| **16 Parts:** | | | |
| 0–999 | (869–042–00045–5) | 33.00 | Jan. 1, 2000 |
| 1000–End | (869–042–00046–3) | 43.00 | Jan. 1, 2000 |
| **17 Parts:** | | | |
| 1–199 | (869–042–00048–0) | 32.00 | Apr. 1, 2000 |
| 200–239 | (869–042–00049–8) | 38.00 | Apr. 1, 2000 |
| 240–End | (869–042–00050–1) | 49.00 | Apr. 1, 2000 |
| **18 Parts:** | | | |
| 1–399 | (869–042–00051–0) | 54.00 | Apr. 1, 2000 |
| 400–End | (869–042–00052–8) | 15.00 | Apr. 1, 2000 |
| **19 Parts:** | | | |
| 1–140 | (869–042–00053–6) | 40.00 | Apr. 1, 2000 |
| 141–199 | (869–042–00054–4) | 40.00 | Apr. 1, 2000 |
| 200–End | (869–042–00055–2) | 20.00 | Apr. 1, 2000 |
| **20 Parts:** | | | |
| 1–399 | (869–042–00056–1) | 33.00 | Apr. 1, 2000 |
| 400–499 | (869–042–00057–9) | 56.00 | Apr. 1, 2000 |
| 500–End | (869–042–00058–7) | 58.00 | Apr. 1, 2000 |
| **21 Parts:** | | | |
| 1–99 | (869–042–00059–5) | 26.00 | Apr. 1, 2000 |
| 100–169 | (869–042–00060–9) | 30.00 | Apr. 1, 2000 |
| 170–199 | (869–042–00061–7) | 29.00 | Apr. 1, 2000 |
| 200–299 | (869–042–00062–5) | 13.00 | Apr. 1, 2000 |
| 300–499 | (869–042–00063–3) | 20.00 | Apr. 1, 2000 |
| 500–599 | (869–042–00064–1) | 31.00 | Apr. 1, 2000 |
| 600–799 | (869–038–00065–0) | 10.00 | Apr. 1, 2000 |
| 800–1299 | (869–042–00066–8) | 38.00 | Apr. 1, 2000 |
| 1300–End | (869–042–00067–6) | 15.00 | Apr. 1, 2000 |
| **22 Parts:** | | | |
| 1–299 | (869–042–00068–4) | 54.00 | Apr. 1, 2000 |
| 300–End | (869–042–00069–2) | 31.00 | Apr. 1, 2000 |
| **23** | (869–042–00070–6) | 29.00 | Apr. 1, 2000 |
| **24 Parts:** | | | |
| 0–199 | (869–042–00071–4) | 40.00 | Apr. 1, 2000 |
| 200–499 | (869–042–00072–2) | 37.00 | Apr. 1, 2000 |
| 500–699 | (869–042–00073–1) | 20.00 | Apr. 1, 2000 |
| 700–1699 | (869–042–00074–9) | 46.00 | Apr. 1, 2000 |
| 1700–End | (869–042–00075–7) | 18.00 | [5] Apr. 1, 2000 |
| **25** | (869–042–00076–5) | 52.00 | Apr. 1, 2000 |
| **26 Parts:** | | | |
| §§ 1.0-1–1.60 | (869–042–00077–3) | 31.00 | Apr. 1, 2000 |
| §§ 1.61–1.169 | (869–042–00078–1) | 56.00 | Apr. 1, 2000 |
| §§ 1.170–1.300 | (869–042–00079–0) | 38.00 | Apr. 1, 2000 |
| §§ 1.301–1.400 | (869–042–00080–3) | 29.00 | Apr. 1, 2000 |
| §§ 1.401–1.440 | (869–042–00081–1) | 47.00 | Apr. 1, 2000 |
| §§ 1.441-1.500 | (869-042-00082-0) | 36.00 | Apr. 1, 2000 |
| §§ 1.501–1.640 | (869–042–00083–8) | 32.00 | Apr. 1, 2000 |
| §§ 1.641–1.850 | (869–042–00084–6) | 41.00 | Apr. 1, 2000 |
| §§ 1.851–1.907 | (869–042–00085–4) | 43.00 | Apr. 1, 2000 |
| §§ 1.908–1.1000 | (869–042–00086–2) | 41.00 | Apr. 1, 2000 |
| §§ 1.1001–1.1400 | (869–042–00087–1) | 45.00 | Apr. 1, 2000 |
| §§ 1.1401–End | (869–042–00088–9) | 66.00 | Apr. 1, 2000 |
| 2–29 | (869–042–00089–7) | 45.00 | Apr. 1, 2000 |
| 30–39 | (869–042–00090–1) | 31.00 | Apr. 1, 2000 |
| 40–49 | (869–042–00091–9) | 18.00 | Apr. 1, 2000 |
| 50–299 | (869–042–00092–7) | 23.00 | Apr. 1, 2000 |
| 300–499 | (869–042–00093–5) | 43.00 | Apr. 1, 2000 |
| 500–599 | (869–042–00094–3) | 12.00 | Apr. 1, 2000 |
| 600–End | (869–042–00095–1) | 12.00 | Apr. 1, 2000 |
| **27 Parts:** | | | |
| 1–199 | (869–042–00096–0) | 59.00 | Apr. 1, 2000 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 200–End | (869–042–00097–8) | 18.00 | Apr. 1, 2000 |
| **28 Parts:** | | | |
| 0-42 | (869–042–00098–6) | 43.00 | July 1, 2000 |
| 43-end | (869-042-00099-4) | 36.00 | July 1, 2000 |
| **29 Parts:** | | | |
| 0–99 | (869–042–00100–1) | 33.00 | July 1, 2000 |
| 100–499 | (869–042–00101–0) | 14.00 | July 1, 2000 |
| 500–899 | (869–042–00102–8) | 47.00 | July 1, 2000 |
| 900–1899 | (869–042–00103–6) | 24.00 | July 1, 2000 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–042–00104–4) | 46.00 | [6]July 1, 2000 |
| 1910 (§§ 1910.1000 to end) | (869–042–00105–2) | 28.00 | [6]July 1, 2000 |
| 1911–1925 | (869–042–00106–1) | 20.00 | July 1, 2000 |
| 1926 | (869–042–00107–9) | 30.00 | [6]July 1, 2000 |
| 1927–End | (869–042–00108–7) | 49.00 | July 1, 2000 |
| **30 Parts:** | | | |
| 1–199 | (869–042–00109–5) | 38.00 | July 1, 2000 |
| 200–699 | (869–042–00110–9) | 33.00 | July 1, 2000 |
| 700–End | (869–042–00111–7) | 39.00 | July 1, 2000 |
| **31 Parts:** | | | |
| 0–199 | (869–042–00112–5) | 23.00 | July 1, 2000 |
| 200–End | (869–042–00113–3) | 53.00 | July 1, 2000 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2] July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1–190 | (869–042–00114–1) | 51.00 | July 1, 2000 |
| 191–399 | (869–042–00115–0) | 62.00 | July 1, 2000 |
| 400–629 | (869–042–00116–8) | 35.00 | July 1, 2000 |
| 630–699 | (869–042–00117–6) | 25.00 | July 1, 2000 |
| 700–799 | (869–042–00118–4) | 31.00 | July 1, 2000 |
| 800–End | (869–042–00119–2) | 32.00 | July 1, 2000 |
| **33 Parts:** | | | |
| 1–124 | (869–042–00120–6) | 35.00 | July 1, 2000 |
| 125–199 | (869–042–00121–4) | 45.00 | July 1, 2000 |
| 200–End | (869–042–00122–5) | 36.00 | July 1, 2000 |
| **34 Parts:** | | | |
| 1–299 | (869–042–00123–1) | 31.00 | July 1, 2000 |
| 300–399 | (869–042–00124–9) | 28.00 | July 1, 2000 |
| 400–End | (869–042–00125–7) | 54.00 | July 1, 2000 |
| **35** | (869–042–00126–5) | 10.00 | July 1, 2000 |
| **36 Parts** | | | |
| 1–199 | (869–042–00127–3) | 24.00 | July 1, 2000 |
| 200–299 | (869–042–00128–1) | 24.00 | July 1, 2000 |
| 300–End | (869–042–00129–0) | 43.00 | July 1, 2000 |
| **37** | (869–042–00130–3) | 32.00 | July 1, 2000 |
| **38 Parts:** | | | |
| 0–17 | (869–042–00131–1) | 40.00 | July 1, 2000 |
| 18–End | (869–042–00132–0) | 47.00 | July 1, 2000 |
| **39** | (869–042–00133–8) | 28.00 | July 1, 2000 |
| **40 Parts:** | | | |
| 1–49 | (869–042–00134–6) | 37.00 | July 1, 2000 |
| 50–51 | (869–042–00135–4) | 28.00 | July 1, 2000 |
| 52 (52.01–52.1018) | (869–042–00136–2) | 36.00 | July 1, 2000 |
| 52 (52.1019–End) | (869–042–00137–1) | 44.00 | July 1, 2000 |
| 53–59 | (869–042–00138–9) | 21.00 | July 1, 2000 |
| 60 | (869–042–00139–7) | 66.00 | July 1, 2000 |
| 61–62 | (869–042–00140–1) | 23.00 | July 1, 2000 |
| 63 (63.1–63.1119) | (869–042–00141–9) | 66.00 | July 1, 2000 |
| 63 (63.1200–End) | (869–042–00142–7) | 49.00 | July 1, 2000 |
| 64–71 | (869–042–00143–5) | 12.00 | July 1, 2000 |
| 72–80 | (869–042–00144–3) | 47.00 | July 1, 2000 |
| 81–85 | (869–042–00145–1) | 36.00 | July 1, 2000 |
| 86 | (869–042–00146–0) | 66.00 | July 1, 2000 |
| 87-135 | (869–042–00146–8) | 66.00 | July 1, 2000 |
| 136–149 | (869–042–00148–6) | 42.00 | July 1, 2000 |
| 150–189 | (869–042–00149–4) | 38.00 | July 1, 2000 |
| 190–259 | (869–042–00150–8) | 25.00 | July 1, 2000 |
| 260–265 | (869–042–00151–6) | 36.00 | July 1, 2000 |
| 266–299 | (869–042–00152–4) | 35.00 | July 1, 2000 |
| 300–399 | (869–042–00153–2) | 29.00 | July 1, 2000 |
| 400–424 | (869–042–00154–1) | 37.00 | July 1, 2000 |
| 425–699 | (869–042–00155–9) | 48.00 | July 1, 2000 |
| 700–789 | (869–042–00156–7) | 46.00 | July 1, 2000 |
| 790–End | (869–042–00157–5) | 23.00 | [6]July 1, 2000 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3] July 1, 1984 |
| 3–6 | | 14.00 | [3] July 1, 1984 |
| 7 | | 6.00 | [3] July 1, 1984 |
| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10–17 | | 9.50 | [3] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3] July 1, 1984 |
| 19–100 | | 13.00 | [3] July 1, 1984 |
| 1–100 | (869–042–00158–3) | 15.00 | July 1, 2000 |
| 101 | (869–042–00159–1) | 37.00 | July 1, 2000 |
| 102–200 | (869–042–00160–5) | 21.00 | July 1, 2000 |
| 201–End | (869–042–00161–3) | 16.00 | July 1, 2000 |
| **42 Parts:** | | | |
| *1–399 | (869–042–00162–1) | 53.00 | Oct. 1, 2000 |
| 400–429 | (869–042–00163–0) | 55.00 | Oct. 1, 2000 |
| 430–End | (869–042–00164–8) | 57.00 | Oct. 1, 2000 |
| **43 Parts:** | | | |
| 1–999 | (869–042–00165–6) | 45.00 | Oct. 1, 2000 |
| *1000–end | (869–042–00166–4) | 55.00 | Oct. 1, 2000 |
| ***44** | (869–042–00167–2) | 45.00 | Oct. 1, 2000 |
| **45 Parts:** | | | |
| 1–199 | (869–042–00168–1) | 50.00 | Oct. 1, 2000 |
| 200–499 | (869–042–00169–9) | 29.00 | Oct. 1, 2000 |
| 500–1199 | (869–042–00170–2) | 45.00 | Oct. 1, 2000 |
| 1200–End | (869–038–00171–1) | 54.00 | Oct. 1, 2000 |
| **46 Parts:** | | | |
| 1–40 | (869–038–00172–9) | 42.00 | Oct. 1, 2000 |
| 41–69 | (869–038–00173–7) | 34.00 | Oct. 1, 2000 |
| 70–89 | (869–038–00174–5) | 13.00 | Oct. 1, 2000 |
| 90–139 | (869–042–00175–3) | 41.00 | Oct. 1, 2000 |
| 140–155 | (869–038–00176–1) | 23.00 | Oct. 1, 2000 |
| 156–165 | (869–038–00177–2) | 21.00 | Oct. 1, 1999 |
| 166–199 | (869–038–00178–8) | 42.00 | Oct. 1, 2000 |
| 200–499 | (869–038–00179–6) | 36.00 | Oct. 1, 2000 |
| 500–End | (869–042–00180–0) | 23.00 | Oct. 1, 2000 |
| **47 Parts:** | | | |
| 0–19 | (869–038–00181–1) | 39.00 | Oct. 1, 1999 |
| 20–39 | (869–042–00182–6) | 41.00 | Oct. 1, 2000 |
| *40–69 | (869–042–00183–4) | 41.00 | Oct. 1, 2000 |
| *70–79 | (869–042–00184–2) | 54.00 | Oct. 1, 2000 |
| 80–End | (869–042–00185–1) | 54.00 | Oct. 1, 2000 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–042–00186–9) | 57.00 | Oct. 1, 2000 |
| *1 (Parts 52–99) | (869–042–00187–7) | 45.00 | Oct. 1, 2000 |
| 2 (Parts 201–299) | (869–038–00188–8) | 36.00 | Oct. 1, 1999 |
| 3–6 | (869–038–00189–3) | 40.00 | Oct. 1, 2000 |
| 7–14 | (869–042–00190–7) | 52.00 | Oct. 1, 2000 |
| 15–28 | (869–038–00191–8) | 36.00 | Oct. 1, 1999 |
| 29–End | (869–042–00192–3) | 38.00 | Oct. 1, 2000 |
| **49 Parts:** | | | |
| 1–99 | (869–038–00193–4) | 34.00 | Oct. 1, 1999 |
| 100–185 | (869–038–00194–2) | 53.00 | Oct. 1, 1999 |
| *186–199 | (869–042–00195–8) | 17.00 | Oct. 1, 2000 |
| 200–399 | (869–038–00196–9) | 53.00 | Oct. 1, 1999 |
| 400–999 | (869–038–00197–7) | 57.00 | Oct. 1, 1999 |
| 1000–1199 | (869–042–00198–2) | 25.00 | Oct. 1, 2000 |
| 1200–End | (869–042–00199–1) | 21.00 | Oct. 1, 2000 |
| **50 Parts:** | | | |
| 1–199 | (869–038–00200–1) | 43.00 | Oct. 1, 1999 |
| 200–599 | (869–042–00201–6) | 35.00 | Oct. 1, 2000 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 600–End | (869–038–00202–7) | 37.00 | Oct. 1, 1999 |
| CFR Index and Findings Aids | (869–042–00047–1) | 53.00 | Jan. 1, 2000 |
| Complete 1999 CFR set | | 951.00 | 1999 |
| Microfiche CFR Edition: | | | |
| Subscription (mailed as issued) | | 290.00 | 1999 |
| Individual copies | | 1.00 | 1999 |
| Complete set (one-time mailing) | | 247.00 | 1997 |
| Complete set (one-time mailing) | | 264.00 | 1996 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..