AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

10–4–01 Thursday
Vol. 66 No. 193 Oct. 4, 2001
Pages 50525–50808

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.

Printed on recycled paper.

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: October 23, 2001—9:00 a.m. to noon

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; or
info@fedreg.nara.gov

Contents

Federal Register

Vol. 66, No. 193

Thursday, October 4, 2001

Agency for International Development
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 50604

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol; viticultural area designations:
Alexander and Dry Creek Valleys, CA, 50564–50565

Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 50604–50606

Antitrust Division
NOTICES
National cooperative research notifications:
Interchangeable Virtual Instruments Foundation, Inc., 50682–50683
Salutation Consortium, Inc., 50683

Army Department
NOTICES
Meetings:
Science Board, 50626
Reports and guidance documents; availability, etc.:
National Training Center and Fort Irwin, CA; expansion plan, 50626

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 50657–50658

Centers for Medicare & Medicaid Services
NOTICES
Meetings:
Medicare Education Advisory Panel, 50658–50659

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 50607

Coast Guard
RULES
Ports and waterways safety:
Vessels arriving or departing U.S. ports; notification requirements, 50565–50574

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Futures Trading Commission
PROPOSED RULES
Securities:
Accounts holding security futures products; applicability of customer protection, recordkeeping, reporting, and bankruptcy rules, etc., 50785–50804
Security futures; margin requirements, 50719–50741

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 50619–50620

Customs Service
RULES
United States-Caribbean Basin Trade Partnership Act:
Brassieres; preferential treatment, 50534–50541

Defense Department
See Army Department
See Navy Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 50620
Meetings:
Science Board, 50620–50621
Travel per diem rates, civilian personnel; changes, 50621–50625

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 50627–50628

Employment and Training Administration
NOTICES
Adjustment assistance:
Accuride International, Inc., 50686
Allison Manufacturing et al., 50686–50687
Bates of Maine, 50687–50688
Collins & Aikman Automotive Interior Systems, 50688
Cooper Energy Services, 50688–50689
Exide Technologies, 50689
H.L. Miller & Son, Inc., 50689
Huhtamaki Food Service, Inc., 50689–50690
Johnston Industries, Inc., 50690
Philips Consumer Electronics Co., 50690
Raltron Electronics et al., 50690–50692
Wirtz Manufacturing Co. et al., 50692–50693
Adjustment assistance and NAFTA transitional adjustment assistance:
ASARCO, Inc., 50683–50684
Cemex Kosmos Cement Co. et al., 50684–50685
Owens-Brockway Glass Containers, 50685–50686
NAFTA transitional adjustment assistance:
Huhtamaki Food Service, Inc., 50693
Owens-Brockway Glass Containers, 50693

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
Coral Canada US Inc., 50628–50629

Engage Energy America, LLC, 50629–50630
PSEG Energy Resources & Trade LLC, 50630

Environmental Protection Agency
RULES
Air pollution control:
State operating permits programs—
Idaho, 50574–50576
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Friction materials manufacturing facilities, 50767–50783
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 50641–50643
Air pollution control:
Citizens suits; proposed settlements—
American Portland Cement Alliance, 50643
Confidential business information and data transfer, 50643–50644
Reports and guidance documents; availability, etc.:
Environmental permitting information exchange and enforcement and compliance information exchange; data standards, 50644–50645
Superfund; response and remedial actions, proposed settlements, etc.:
Beede Waste Oil Site, NH, 50645–50646
Water pollution; discharge of pollutants (NPDES):
New Mexico and Oklahoma—
Egg production operations; general permit, 50646–50651

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Aircraft operating and flight rules, etc.:
Aircraft security under general operating and flight rules, 50531–50534
Airworthiness directives:
Airbus, 50529–50531
PROPOSED RULES
Airworthiness directives:
Airbus, 50580–50582, 50588–50591
BAE Systems (Operations) Ltd., 50586–50588
Bombardier, 50582–50584
Short Brothers, 50584–50586
Univair Aircraft Corp., 50578–50580

Federal Communications Commission
RULES
Radio stations; table of assignments:
Various States, 50576
PROPOSED RULES
Radio stations; table of assignments:
Colorado, 50602
Colorado and Missouri, 50602–50603
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 50651–50655
Rulemaking proceedings; petitions filed, granted, denied, etc., 50655

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 50655–50656

Federal Energy Regulatory Commission
PROPOSED RULES
Practice and procedure:
Electronic service of documents, 50591–50594
NOTICES
Electric rate and corporate regulation filings:
Astoria Energy LLC et al., 50635–50638
PacifiCorp et al., 50638–50640
Environmental statements; availability, etc.:
Erie Boulevard Hydropower LP, 50640
Hydroelectric applications, 50640–50641
Meetings:
Regional Transmission Organizations—
Combined Northeast RTO; benefits presentation, 50641
Practice and procedure:
Off-the-record communications, 50641
Applications, hearings, determinations, etc.:
Bonneville Power Administration, 50630–50632
Calypso Pipeline, LLC, 50632–50633
KN Wattenberg Transmission, LLC, 50633
Tennessee Gas Pipeline Co., 50633–50634
Transcontinental Gas Pipe Line Corp., 50634–50635

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 50656
Formations, acquisitions, and mergers, 50656
Meetings:
Consumer Advisory Council, 50656–50657
Meetings; Sunshine Act, 50657

Federal Retirement Thrift Investment Board
RULES
Thrift Savings Plan:
Uniformed services accounts, 50711–50717

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 50671–50672
Marine mammals:
Incidental taking; authorization letters, etc.—
Oil and gas industry exploration activities; polar bears, 50672

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
North Carolina
Pergo, Inc.; laminate-particle board flooring plant; withdrawn, 50607

Forest Service
NOTICES
Meetings:
Northwest Sacramento Provincial Advisory Committee and Klamath Provincial Advisory Committee, 50606
Southwest Oregon Province Interagency Executive Committee Advisory Committee, 50606
Western Washington Cascades Provincial Interagency Executive Committee Advisory Committee, 50606
Willamette Provincial Advisory Committee, 50606–50607

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See National Institutes of Health

Interior Department
See Fish and Wildlife Service
See National Park Service
See Reclamation Bureau

Internal Revenue Service
RULES
Procedure and administration:
Unified partnership audit procedures, 50541–50564
NOTICES
Meetings:
Art Advisory Panel, 50709

International Trade Administration
NOTICES
Antidumping:
Automotive replacement glass windshields from—
China, 50607–50608
Folding metal tables and chairs from—
China, 50608
Honey from—
Argentina, 50611–50613
China, 50608–50611
Countervailing duties:
Honey from—
Argentina, 50613–50615

International Trade Commission
NOTICES
Import investigations:
Pure magnesium from—
Russia, 50680
North American Free Trade Agreement:
Rules of origin; modifications; probable effects; comment request, 50680–50681

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
A-1 Auto Service, Inc., 50681–50682
Caribbean Airport Facilities, Inc., et al., 50682
McDonald, Kenneth, et al., 50682

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 50683

National Institute of Standards and Technology
NOTICES
Grants and cooperative agreements; availability, etc.:
State Relations Rapid Response Team Program, 50615–50618

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 50659–50660
Meetings:
Director's Council of Public Representatives, 50660
National Cancer Institute, 50660–50663
National Heart, Lung, and Blood Institute, 50663
National Institute of Allergy and Infectious Diseases, 50664–50665
National Institute of Child Health and Human Development, 50664–50665
National Institute of Environmental Health Sciences, 50663–50664
National Institute of Mental Health, 50665
National Institute of Neurological Disorders and Stroke, 50663
National Institute of Nursing Research, 50664
National Institute on Drug Abuse, 50663
National Library of Medicine, 50665–50666
Scientific Review Center, 50666–50671

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Sharpchin and northern rockfish, 50576–50577
NOTICES
Senior Executive Service:
Performance Review Board; membership, 50618–50619

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Museum of Natural History and Planetarium, RI—
Narragansett Indian remains from various sites in Rhode Island; correction, 50672–50673
Nevada State Museum, NV—
Inventory from various sites in Nevada, 50673–50674
New York State Museum, Albany, NY—
Inventory from Coffin and Menands Bridge sites, NY, 50674–50675
Peabody Museum of Archaeology and Ethnology, Harvard University, MA—
Inventory from Channel Islands, CA, 50676
Inventory from San Miguel Island and Santa Cruz Island, CA, 50675–50676
University of Denver, Anthropology Department and Museum, CO—
Inventory from Southwestern United States (unknown locations) and New Mexico, 50676–50677
Williamson Museum, Northwestern State University of Louisiana, LA—
Glass beads from U.S. Fish Hatchery site, Natchitoches Parish, LA, 50679–50680
Inventory from various sites in Louisiana, 50677–50679

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 50626–50627
Meetings:
Planning and Steering Advisory Committee, 50627

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Exelon Generation Co., LLC, 50696
TXU Electric, 50696–50697
Applications, hearings, determinations, etc.:
AmerGen Energy Co., LLC, 50693–50694
Entergy Nuclear Generation Co., 50694–50695
Exelon Generation Co., LLC, et al., 50695

Patent and Trademark Office
NOTICES
Patents:
Patent and trademark classified paper files; removal from public search facilities and replacement by electronic records, 50619

Presidential Documents
PROCLAMATIONS
Special observances:
Child Health Day (Proc. 7476), 50527–50528
National Domestic Violence Awareness Month (Proc. 7475), 50525–50526
ADMINISTRATIVE ORDERS
Groom Lake, NV, Air Force's operating location near; classified information (Presidential Determination No. 2001-27), 50805–50807

Public Health Service
See Centers for Disease Control and Prevention
See National Institutes of Health

Reclamation Bureau
NOTICES
Meetings:
Glen Canyon Dam Adaptive Management Work Group and Glen Canyon Technical Work Group, 50680

Securities and Exchange Commission
PROPOSED RULES
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Mandated EDGAR filing for foreign issuers, 50743–50765
Securities:
Accounts holding security futures products; applicability of customer protection, recordkeeping, reporting, and bankruptcy rules, etc., 50785–50804
Security futures; margin requirements, 50719–50741
NOTICES
Investment Company Act of 1940:
Deregistration applications—
IAI Investment Funds II, Inc., et al., 50697–50699
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 50699–50702

Small Business Administration
NOTICES
Disaster loan areas:
New York, 50702–50703
Virginia; correction, 50703

State Department
NOTICES
Export-Import Bank Act of 1945; approvals and disapprovals; determinations:
Venezuela, 50703
Grants and cooperative agreements; availability, etc.:
FREEDOM Support Act/Future Leaders Exchange Program, 50703–50706
New Independent States; Regional Educational Advising Coordinator Program, 50706–50708

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Union Pacific Railroad Co., 50708

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Customs Service
See Internal Revenue Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 50709

Veterans Affairs Department
PROPOSED RULES
Medical benefits:
Extended care services; copayments, 50594–50601

Separate Parts In This Issue

Part II
Federal Retirement Thrift Investment Board, 50711–50717

Part III
Commodities Futures Trading Commission, and Securities and Exchange Commission, 50719–50741

Part IV
Securities and Exchange Commission, 50743–50765

Part V
Environmental Protection Agency, 50767–50783

Part VI
Commodity Futures Trading Commission, and Securities and Exchange Commission, 50785–50804

Part VII
The President, 50805–50807

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.
To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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:

7475 50525
7476 50527

Administrative Orders:

Presidential Determinations:
No. 2001–27 of September 18, 2001 50807

5 CFR

1604 50712

14 CFR

39 50529
91 50531

Proposed Rules:

39 (6 documents) 50578, 50580, 50582, 50584, 50586, 50588

17 CFR

Proposed Rules:

1 50786
41 (2 documents) 50720, 50786
190 50786
230 50744
232 50744
239 50744
240 (2 documents) 50744, 50786
242 50720
249 50744
269 50744

18 CFR

Proposed Rules:

Ch. 1 50591

19 CFR

10 50534
163 50534

26 CFR

301 50541
602 50541

27 CFR

9 50564

33 CFR

160 50565

38 CFR

Proposed Rules:

17 50594

40 CFR

70 50574

Proposed Rules:

63 50768

47 CFR

73 50576

Proposed Rules:

73 (2 documents) 50602

50 CFR

679 50576

Federal Register
Vol. 66, No. 193
Thursday, October 4, 2001

Presidential Documents

Title 3—

The President

Proclamation 7475 of October 1, 2001

National Domestic Violence Awareness Month, 2001

By the President of the United States of America

A Proclamation

The social blight of domestic violence has continued to burden America into the 21st Century. Our homes should be places of safety and comfort. Tragically, domestic violence can and does turn many homes into places of torment. The grim facts speak for themselves: almost one-third of American women murdered each year are killed by their current or former partners, usually a husband. Approximately 1 million women annually report being stalked. And many children suffer or witness abuse in their homes, which can sadly spawn legacies of violence in families across America.

Domestic violence spills over into schools and places of work; and it affects people from every walk of life. Though abuse may occur in the seclusion of a private residence, its effects scar the face of our Nation.

In the United States, we have strict laws intended to hold domestic abusers accountable for their vile conduct by bringing them to justice, but laws alone are not enough. A comprehensive, coordinated approach must shape our strategy to reduce domestic violence. Accordingly, the Federal Government is partnering with States, local communities, and other entities to implement tough and effective mechanisms to respond to reports of domestic violence.

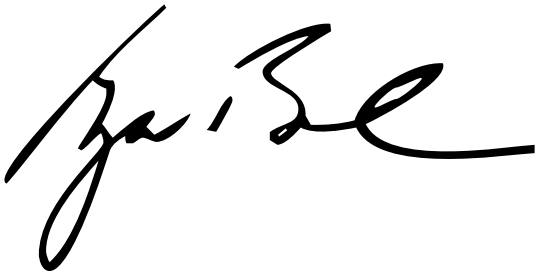
These efforts include specialized units in police departments, and prosecutors offices that work with local victims' advocates to make the criminal justice system more responsive to victims and more retributive to their abusers. Jurisdictions throughout the country now provide legal assistance to ensure that when victims try to escape abuse, they can obtain legal help from attorneys who understand the dynamics of domestic violence. Law enforcement officers, prosecutors, court personnel, and service providers are working to improve their responses to the often hidden victims of elder abuse and violence against women with disabilities. Moreover, thousands of communities now have shelters and emergency services for abused women and their children.

As a Nation, we must prioritize addressing the problem of domestic violence in our communities every day of the year. National Domestic Violence Awareness Month provides us with a special opportunity to emphasize that domestic violence is a crime, to warn abusers that they will be prosecuted, and to offer victims more aid and support. We can and must radically reduce and work to eliminate this scourge from our land. To succeed, this effort must be echoed by officials from every segment of the criminal justice system, Federal, State, and local. Community leaders, health care professionals, teachers, employers, friends, and neighbors all will play an important role in eradicating domestic violence.

As we observe National Domestic Violence Awareness Month, I call on all Americans to commit to preventing domestic violence and to assist those who suffer from it. These collective efforts will contribute to peace in our homes, schools, places of work, and communities and will help ensure the future safety of countless children and adults.

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 October 2001, as National Domestic Violence Awareness Month. I urge all Americans to learn more about this terrible problem and to take positive action in protecting communities and families from its devastating effects.

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



[FR Doc. 01–25040
Filed 10–3–01; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7476 of October 1, 2001

Child Health Day, 2001

By the President of the United States of America

A Proclamation

Many of us fondly remember the joys and challenges of childhood and appreciate the endless sacrifices that our families made to love, protect, and encourage us as we grew into adulthood. On Child Health Day, we take time as parents and concerned citizens to assess the health and well-being of our children and to reaffirm our commitment to nurture and care for them in the best way possible.

To secure the strength and continued growth of our great Nation, we must work to provide all of our children with the opportunities and tools they must have to succeed. From quality health care and safe living environments to emotional support and timely encouragement, our children need and deserve our utmost attention.

In light of the tragic terrorist attacks of September 11, 2001, we must redouble our efforts to ensure that our children feel safe. We must listen carefully to them and help them express and work through feelings of fear, confusion, and sorrow. And, most importantly, we must let them know that they are loved. Children who feel loved and supported can better reach their full potential and achieve their dreams.

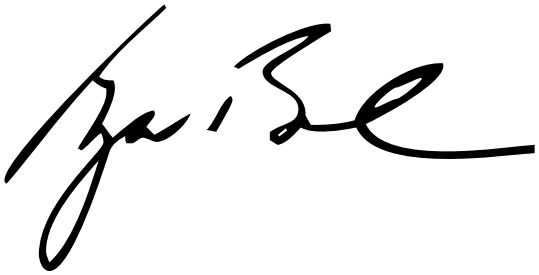
As parents, teachers, and neighbors, we must be aware of, and work to prevent, the physical, emotional, and psychological threats that potentially endanger our children. Parents must be vigilant in ensuring that their children are immunized against preventable diseases. They should check their homes for cleaning products, gases, and other hazards, including lead-based paint, radon, carbon monoxide, and allergens that may cause chronic illnesses, respiratory disorders, and sometimes death. Children should be taught to be wary of strangers who approach them and to seek the help of someone they trust when faced with uncomfortable situations. We also must use innovative teaching methods to encourage our children to develop positive habits such as regular exercise, good nutrition, abstinence from drugs, alcohol, and inappropriate sexual behavior, and good personal hygiene.

Our steadfast commitment to the health and welfare of our children is especially important for those who have special health care needs. Children who suffer from chronic physical, developmental, behavioral, and emotional conditions require specialized services in their communities. I encourage parents and caretakers to recognize these health problems, to obtain specialized care as necessary, and to monitor their children's conditions closely in order to give them every advantage toward leading a successful, fulfilling life.

My Administration is strongly committed to supporting families and children in need and to improving our education system so that no child is left behind. Let us work together as individuals, families, communities, and Americans to ensure that the health of our children always remains a national priority. The Congress, by a joint resolution approved May 18, 1928, as amended (U.S.C. 105), has called for the designation of the first Monday in October as ''Child Health Day'' and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Monday, October 1, 2001, as Child Health Day. On this day, and on every day throughout the year, I call upon families, schools, child health professionals, communities, and governments to dedicate themselves to fostering the healthy development and well-being of all our children—especially those with special health care needs.

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



[FR Doc. 01–25041
Filed 10–3–01; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

Vol. 66, No. 193

Thursday, October 4, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–282–AD; Amendment 39–12454; AD 2001–20–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplane, and Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4 series airplanes, and certain Model A300 B4–600, B4–60–R, and F4–600R (collectively called A300–600) series airplanes, that currently requires a one-time inspection to detect cracks in gear rib 5 (let and right) of the main landing gear (MLG) attachment fittings at the lower flange and vertical web, and repair if necessary. This amendment revises the applicability by including additional airplanes. The actions specified in this AD are intended to detect and correct fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: October 19, 2001.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of September 13, 2001 (66 FR 45581, August 29, 2001).

Comments for inclusion in the Rules Docket must be received on or before November 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–282–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–MN–282–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On August 20, 2001, the FAA issued AD 2001–17–29, amendment 39–12420 (66 FR 45581, August 29, 2001), applicable to certain Airbus Model A300 B2 and B4 series airplanes, and certain Model A300 B4–600, B4–6004, and F4–600R (collectively called A300–600) series airplanes, to require a one-time inspection to detect cracks in gear rib 5 (left and right) of the main landing gear (MLG) attachment fittings at the lower flange and vertical web, and repair if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions required by that AD are intended to detect and correct fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has learned that three airplanes had been inadvertently omitted from the applicability. Airplanes having series number 789, 790, and 791 are also subject to the identified unsafe condition. This additional rulemaking is therefore necessary to correct this oversight and add those three airplane to the applicability of this AD.

FAA's Conclusions

These airplanes models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Direction Générale de 1 Aviation Civil (DGAC), which is the airworthiness authority for France, has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD–2001–17–29 to continue to require a on-time inspection to detect cracks in gear rib 5 (left and right) of the MLG attachment fittings at the lower flange and vertical web, and repair if necessary. This AD revises the applicability to include additional airplanes.

Difference Between AD and AOTs

The AOTs refer to Airbus Service Bulletins A300–57A0234 and A300–57A6087 for repair instructions. Those service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions. However, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness

agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the DGAC is acceptable for compliance with this AD.

Interim Action

This is considered to be interim action. The manufacturer is gathering data that will enable it to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting fight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the addressed specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statements is made: ''Comments to Docket 2001–NM–282–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12420 (66 FR 45581, August 29, 2001), and by adding a new airworthiness directive (AD), amendment 39–12454, to read as follows:

2001–20–06 Airbus Industrie: Amendment 39–12454. Docket 2001–NM–282–AD. Supersedes AD 2001–17–29, Amendment 39–12420.

Applicability: The following airplanes, certificated in any category:

Applicability

Model	Except
A300 B2 and A300 B4 series airplanes	Those modified in accordance with Airbus Service Bulletin A300–57–0235 (Modification 11932) or inspected in accordance with Airbus Service Bulletin A300–57A0234.
A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes.	Those modified in accordance with Airbus Modification 11912 or Service Bulletin A300–57–6088 (Modification 11932) or inspected in accordance with Airbus Service Bulletin A300–57A6087.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the attachment fittings of the main landing gear (MLG), which could result in reduced structural integrity of the airplane, accomplish the following:

Note 2: The inspection required by paragraph (a) of this AD is also included in

the inspection requirement of paragraph (a) of AD 2000–05–07, amendment 39–11616. As indicated by the phrase, ''unless accomplished previously,'' for any airplane on which the initial inspection of AD–2000–05–07 has been accomplished before the effective date of this AD, the inspection specified by paragraph (a) of this AD is not required.

Restatement of Requirements of AD 2001–17–29

Inspection

(a) For airplanes subject to the requirements of AD 2001–17–29, amendment 39–12420: Before the accumulation of 7,500 total flight cycles, or within 100 flight cycles after September 13, 2001 (the effective date of AD 2001–17–29), whichever occurs later, perform a one-time detailed visual inspection to detect cracks in gear rib 5 (left and right) of the MLG attachment fittings at the lower flange and vertical web, in accordance with Airbus All Operators Telex (AOT) A300–57A0239 (for Model A300 B2 and B4 series airplanes) or A300–600–57A6094 (for Model A300–600 series airplanes), both dated August 2, 2001.

(1) If any cracking is detected and it is found at one hole only and does not extend out of the spotface of the hole: Prior to further flight, repair in accordance with the applicable AOT.

(2) If any cracking is detected and it is found at more than one hole or extends out of the spotface of any hole: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l' Aviation Civile (or its delegated agent).

Note 3: The AOTs refer to Airbus Service Bulletins A300–57A0234 (for Model A300 B2 and B4 series airplanes) and A300–57A6087 (for Model A300–600 series airplanes) as additional sources of service information for the inspection and repair of any cracking found during the inspection.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

New Requirements of This AD

Inspection

(b) For airplanes not identified in paragraph (a) of this AD: Before the accumulation of 7,500 total flight cycles, or within 100 flight cycles after the effective date of this AD, whichever occurs later, perform the inspection and applicable corrective actions specified by paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) Except as required by paragraph (a)(2) of this AD: The actions must be done in accordance with Airbus All Operators Telex A300–57A0239, dated August 2, 2001; or Airbus All Operators Telex A300–600–57A6094, dated August 2, 2001; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of September 13, 2001 (66 FR 45581, August 29, 2001). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in French telegraphic airworthiness directive T2001–364(B), dated August 2, 2001.

Effective Date

(f) This amendment becomes effective on October 19, 2001.

Issued in Renton, Washington, on September 27, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–24779 Filed 10–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2001–10738; SFAR 91]

RIN 2120–AH49

Aircraft Security Under General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action requires certain aircraft operators to search aircraft and screen passengers, crewmembers, and other persons, and their accessible property prior to departure. This action is being taken to counter possible threats in the wake of the September 11, 2001 terrorist attacks.

DATES: This action is effective October 1, 2001, and shall remain in effect until further notice. The compliance date for persons conducting operations specified in paragraph 1(a) of SFAR 91 is October 6, 2001.

FOR FURTHER INFORMATION CONTACT: *Questions on this rulemaking:* Lon M. Siro, Aviation Security Specialist, ACP–100, Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8058.

Questions on security procedures or waivers: Any FAA Regional Civil Aviation Security Division office. You can find a list of all Regional Civil Aviation Security Division offices and contract information at *http://cas.faa.gov/usa.html.* These offices are identified by the appropriate FAA regional designation followed by ''–700.''

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/armhome.htm or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs/aces/aces140html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of

1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http:www.faa.gov/avr/arm/sbrefa.htm and send electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.gov.*

Background

In the wake of the September 11, 2001, terrorist attacks against four U.S. commercial aircraft resulting in the tragic loss of human life at the World Trade Center, the Pentagon, and southwest Pennsylvania, the potential for additional terrorist attacks exists. Those responsible for the attacks are believed to be affiliated with an organization possessing a near-global terrorist network. The leaders of the groups constituting this organization have publicly stated they will attack the United States for incarcerating extremist members and are vehemently opposed to U.S. foreign policy and presence in the Middle East. They retain a capability and willingness to conduct airline bombings, hijackings, and suicide attacks against U.S. targets. These tragedies resulting from the attacks also indicate that the terrorists are willing to use aircraft as weapons to inflict significant damage to persons and property in the United States.

While the FAA has issued emergency security procedures under title 14, Code of Federal Regulations (14 CFR) parts 108 and 129 to counter the threat posed by deadly and dangerous items brought into an aircraft, these actions do not address the threat to certain operations that are currently not subject to mandated security procedures. Accordingly, the FAA is requiring operators to implement security procedures: (1) By October 6, 2001 for all aircraft operations in which passengers, crewmembers, or other persons are enplaned from or deplaned into a sterile area regardless of aircraft weight (except for scheduled passenger operations and public charter passenger operations); and (2) when notified, for all aircraft operations conducted under part 91 in aircraft with a maximum certificated takeoff weight exceeding 12,500 pounds. The requirement to implement security procedures for operations conducted in aircraft with a maximum certificated takeoff weight exceeding 12,500 pounds applies regardless of whether passengers, crewmembers, or other persons are enplaned from, or deplaned into, a sterile area.

Persons conducting operations described in 1(a) of this SFAR must implement security procedures by October 6, 2001. These operators use sterile areas that also are used by scheduled passenger and public charter passenger operations subject to security measures under 14 CFR parts 108 and 129. It is critical that stringent security be maintained in sterile areas to ensure the safety of the traveling public, and that uniform security measures be applied to all persons in this area. We note that when an operator affected by this rule enplanes passengers, crewmembers, or other persons from, or deplanes those persons into, an existing sterile area, there are screening checkpoints in place and personnel trained to conduct aircraft searches that may be under the control of other operators. These resources may be used by an operator affected by this rule. Accordingly, this SFAR permits operators to contract for such services to meet the requirements of this rule. We also note that the requirements of paragraph 1(a) of this SFAR do not apply to aircraft operations conducted in a security identification display area (SIDA) as defined in § 107.25.

Further, effective on November 14, 2001, private charter operators enplaning passengers from, and deplaning passengers into, sterile areas will be subject to security requirements set forth in a revision to part 108. See ''Aircraft Operator Security: Final Rule'' (66 FR 37330; July 17, 2001). This SFAR has the effect of advancing the date on which private charter operators must apply security procedures required under revised part 108 to conduct operations into or out of sterile areas. The FAA intends to provide private charter operators conducting these operations portions of the security program that will apply to them under revised part 108. The FAA will also provide portions of the security program to operators of private or corporate aircraft that enplane persons from, or deplane persons into, sterile areas. Affected operators may obtain those portions of the security program that contain the approved procedures by contacting an office specified in **FOR FURTHER INFORMATION CONTACT.**

The security program is sensitive security information under part 191 and those portions provided to private charter operators or other persons to meet the requirements of paragraph 1(a) of this SFAR must be protected from unauthorized disclosure. Sensitive security information in the possession of other than those with a need to know may be detrimental to the safety of the traveling public. Accordingly, paragraph 2(b) of this SFAR provides that the operator must restrict the distribution, disclosure, and availability of information contained in the security procedures approved to comply with paragraph 1(a) of this SFAR to persons with a need to know as described in part 191.

Paragraph 1(b) of this SFAR establishes a process that can be used by the Administrator to rapidly address various types of threats. Security procedures approved to meet paragraph 1(b) of this SFAR will be tailored to meet various threats and could apply to any or all of the operations subject to the rule. Persons conducting operations described in 1(b) of this SFAR are not required to implement security procedures to meet this rule unless notified by the Administrator. The FAA will notify operators by NOTAM when they must apply these security procedures and will make the procedures available to affected operators. We expect threat conditions may change rapidly, and therefore may require the implementation of different security procedures at certain times for for certain operations. The Administrator will require operators to implement these procedures only when it is determined that threat conditions warrant.

All security procedures used to meet the requirements of this SFAR must be approved by the Administrator. Similar to the procedures specified in paragraph 2(a) of this SFAR, the procedures specified in paragraph 2(b) may require that affected aircraft be searched. They may also require that passengers, crewmembers, and other persons and their accessible property (carry-on items) be screened prior to boarding. Screening may include inspection for explosives, incendiaries, and deadly or dangerous weapons, and other measures verifying the identities of passengers, crewmembers, and other persons.

Paragraph 4 of this SFAR specifies that the FAA may issue a waiver if it finds that the operation can be conducted safely under the terms of the waiver. We note, for instance, that many of the aircraft operations subject to this SFAR are conducted by corporations that may have strong corporate security practices. The FAA may consider whether these or other practices warrant the grant of a waiver.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and

public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon date of filing for public inspection at the Office of the Federal Register. This action is necessary to prevent a possible imminent hazard to aircraft and persons and property within the United States.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no new requirements for information collection associated with this SFAR.

Regulatory Analyses

This rulemaking action is taken under an emergency situation within the meaning of section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies this rule. The FAA is not able to assess whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. The FAA recognizes that this rule may impose significant costs on some operators, including delaying their operations until they are able to carry out the security procedures. The current security threat requires, however, that operators take all necessary measures to ensure the safety and security of their operations.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

The Amendment

For the reasons stated in the preamble, the Federal Aviation Administration amends 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 40101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Add Special Federal Aviation Regulation (SFAR) No. 91 to read as follows:

SFAR NO. 91—AIRCRAFT SECURITY UNDER GENERAL OPERATING AND FLIGHT RULES

1. *Applicability.* This SFAR applies to:

(a) All aircraft operations in which passengers, crewmembers, or other persons are enplaned from or deplaned into a sterile area, except for scheduled passenger operations and public charter passenger operations. For purposes of this SFAR, ''sterile area,'' ''scheduled passenger operations,'' and ''public charter'' are defined in § 108.3 of this chapter.

(b) Each aircraft operation conducted in an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds except for those operations specified in paragraph 1(a) of this SFAR and those operations conducted under a security program under part 108 or 129 of this chapter.

2. *Procedures.*

(a) Any person conducting an operation identified in paragraph 1 of this SFAR must conduct a search of the aircraft prior to departure and screen passengers, crewmembers, and other persons and their accessible property (carry-on items) prior to boarding in accordance with security procedures approved by the Administrator.

(b) The security procedures approved by the Administrator for operations specified in paragraph 1(a) of this SFAR are sensitive security information. The operator must restrict the distribution, disclosure, and availability of information contained in the security procedures to persons with a need to know as described in part 191 of this chapter.

3. *Compliance Date.* Persons conducting operations identified in paragraph 1(a) of this SFAR must implement security procedures on October 6, 2001. Persons identified in paragraph 1(b) of this SFAR must implement security procedures when notified by the Administrator. The FAA will notify operators identified in 1(b) of this SFAR by NOTAM when they must implement security procedures.

4. *Waivers.* The Administrator may permit a person conducting an operation identified in paragraph 1 of this SFAR to deviate from the provisions of this SFAR if the Administrator finds that the operation can be conducted safely under the terms of the waiver.

5. *Delegation.* The authority of the Administrator under this SFAR is also exercised by the Associate Administrator for Civil Aviation Security and the Deputy Associate Administrator for Civil Aviation Security.

6. *Expiration.* This Special Federal Aviation Regulation shall remain in effect until further notice.

Issued in Washington, DC on October 1, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–24918 Filed 10–1–01; 3:09 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 163

[T.D. 01–74]

RIN 1515–AC89

Preferential Treatment of Brassieres Under the United States-Caribbean Basin Trade Partnership Act

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

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement those provisions within the United States-Caribbean Basin Trade Partnership Act (the CBTPA) that establish standards for preferential treatment for brassieres imported from CBTPA beneficiary countries. The regulatory amendments contained in this document involve specifically the methods, procedures and related standards that will apply for purposes of determining compliance with the 75 percent aggregate U.S. fabric components content requirement under the CBTPA brassieres provision.

DATES: Interim rule effective October 4, 2001. Comments must be received on or before December 3, 2001.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Legal issues: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

Other issues: Dick Crichton, Office of Field Operations (202–927–0162).

SUPPLEMENTARY INFORMATION:

Background

United States-Caribbean Basin Trade Partnership Act

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the ''Act''), Public Law 106–200, 114 Stat. 251. Title II of the Act concerns trade benefits for the Caribbean Basin and is referred to in the Act as the ''United States-Caribbean Basin Trade Partnership Act'' (the ''CBTPA''). Within Subtitle B of Title II of the Act, section 211 sets forth temporary provisions for the purpose of providing additional trade benefits to Caribbean Basin countries designated by the President as CBTPA beneficiary countries.

Subsection (a) of section 211 of the Act revised section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute codified at 19 U.S.C. 2701–2707). The CBI is a duty preference program that applies to exports from those Caribbean Basin countries that have been designated by the President as program beneficiaries. Section 213(b) as amended by section 211(a) of the Act consists of five principal paragraphs. Paragraph (1) of amended section 213(b) lists six categories of goods which are excluded from standard duty-free treatment under the CBI (one of these categories consists of textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date). Paragraph (2) of amended section 213(b) provides, during the ''transition period,'' for the application of preferential treatment (that is, entry in the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels) to specific textile and apparel articles; thus, paragraph (2) operates in part as an exception to the exclusion rule for textile and apparel articles under paragraph (1). Paragraph (3) of amended section 213(b) applies to the goods excluded from CBI duty-free treatment under paragraph (1) other than textile and apparel articles and in effect provides for the application of NAFTA tariff treatment to those goods during the ''transition period.'' Paragraph (4) of amended section 213(b) sets forth regulatory and related standards for purposes of preferential treatment under paragraph (2) or (3) and, among other things, requires the use of Certificate of Origin procedures modeled on the NAFTA. Paragraph (5) of amended section 213(b) sets forth definitions and special rules and, among other things, defines ''transition period'' for purposes of section 213(b) as meaning, with respect to a CBTPA beneficiary country, the period that begins on October 1, 2000, and ends on the earlier of September 30, 2008, or the date on which a free trade agreement enters into force with respect to the United States and the CBTPA beneficiary country and defines ''CBTPA beneficiary country'' for purposes of section 213(b) as meaning any ''beneficiary country'' as defined in section 212(a)(1)(A) of the CBI statute (19 U.S.C. 2702(a)(1)(A)) which the President designates as a CBTPA beneficiary country.

One of the specific textile and apparel article categories to which preferential treatment may apply during the transition period under paragraph (2) of amended section 213(b) consists of brassieres described in paragraph (2)(A)(iv) as follows:

(iv) CERTAIN OTHER APPAREL ARTICLES.—(I) Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, if the article is both cut and sewn or otherwise assembled in the United States, or one or more of the CBTPA beneficiary countries, or both.

(II) During the 1-year period beginning on October 1, 2001, and during each of the six succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabric components formed in the United States that are used in the production of all such articles of that producer or entity during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

(III) The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabric components formed in the United States used in the production of such articles of that producer or entity in the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

Thus, the preferential treatment available to brassieres under the CBTPA amendments represents a departure from historical practice under the CBI which (1) excluded most textile and apparel articles, including brassieres, from CBI duty-free treatment and (2) had no provision regarding exemption from quantitative restrictions, limitations or consultation levels. Although brassieres may receive preferential treatment under the CBTPA during the first year of the ''transition period'' (that is, through September 30, 2001) without regard to any U.S. fabric component content requirement, for each year after that first year the 75 percent U.S. fabric component content

requirement under paragraph (2)(A)(iv)(II) of the statute (or the 85 percent U.S. fabric component content requirement under paragraph (2)(A)(iv)(III) of the statute) must have been met by the producer or entity controlling production for all brassieres produced and entered in the United States during the preceding year in order for the U.S. importer to be able to file a claim for preferential treatment on brassieres during the current year. If a producer or entity controlling production fails to meet the 75 percent standard in a given year, then during the entire following year claims for preferential treatment may not be made on its brassieres and the 85 percent standard must be met in order for its brassieres to be eligible for preferential treatment in the next year. Under the statute, preferential treatment for brassieres under the CBTPA will terminate when the ''transition period'' ends either by adoption of a new trade agreement between the United States and the CBTPA beneficiary country or on September 30, 2008, whichever is earlier. If preferential treatment under the CBTPA terminates without adoption of a new free trade agreement, then the prior CBI regime would come back into operation and brassieres would revert to dutiable status and could be subject to quantitative restrictions, limitations or consultation levels.

Presidential and Regulatory Action Under the CBTPA

On October 2, 2000, President Clinton signed Proclamation 7351 (published in the **Federal Register** at 65 FR 59329 on October 4, 2000) to implement the CBTPA. This Proclamation (1) included a list of countries designated as CBTPA beneficiary countries, (2) authorized the United States Trade Representative to make certain determinations regarding designated beneficiary countries under paragraph (4) of amended section 213(b) and to publish a notice of those determinations and of consequential changes to the HTSUS in the **Federal Register**, and (3) set forth, in an Annex, modifications to the HTSUS to accommodate the preferential treatment and other CBTPA import provisions. Included in those HTSUS modifications was the addition of a new Subchapter XX to Chapter 98 to reflect the specific textile and apparel article provisions of paragraph (2) of amended section 213(b), including, in subheading 9820.11.15, the brassieres of paragraph (2)(A)(iv). Subsequently, on October 10, 2000, the United States Trade Representative published in the **Federal Register** (65 FR 60236) a notice, with an effective date of October 2, 2000, setting forth a determination regarding certain designated CBTPA beneficiary countries and making conforming changes to the HTSUS as required by Proclamation 7351 and thus putting into effect the trade benefit provisions of the CBTPA.

On October 5, 2000, Customs published in the **Federal Register** (65 FR 59650) as T.D. 00–68, with an effective date of October 1, 2000, an interim rule document setting forth amendments to the Customs Regulations which included, among other things, the addition of new §§ 10.221 through 10.227 (19 CFR 10.221 through 10.227) to implement those textile and apparel preferential treatment provisions within paragraphs (2), (4) and (5) of amended section 213(b) of the CBI statute that relate to U.S. import procedures. The regulatory amendments contained in that document reflected and clarified the statutory standards for the trade benefits applicable to textile and apparel articles under the CBTPA and also included specific documentary, procedural and other related requirements that must be met in order to obtain those benefits. Section 10.223(a) of those regulations describes the various categories of textile and apparel articles to which preferential treatment may apply and includes, in paragraph (a)(6), a reference to brassieres as described in paragraph (2)(A)(iv)(I) of amended section 213(b).

The regulatory texts in T.D. 00–68 only set forth the general brassiere product description provision of subclause (I) of paragraph (2)(A)(iv) of the statute and therefore did not address the aggregate cost or value provisions of subclauses (II) and (III) of paragraph (2)(A)(iv), for two reasons. First, as indicated above, those aggregate cost or value provisions do not have direct application to imported goods until the second year of the statutory 8-year ''transition period.'' Second, there were a number of interpretive and operational issues regarding implementation of the subclause (II) and (III) provisions that Customs was unable to resolve within the relatively short time period available for preparation and timely publication of the basic CBTPA implementing regulations in T.D. 00–68.

Customs recognizes, however, that appropriate regulatory standards should be in place for reference by the general public by October 1, 2001. Customs notes in this regard that subclause (III) of paragraph (2)(A)(iv) requires that Customs develop and implement methods and procedures to ensure ongoing compliance with the aggregate 75 percent U.S.-formed fabric components cost requirement of subclause (II). Moreover, even though the 75 percent aggregate requirement does not control the application of preferential treatment to goods entered prior to October 1, 2001, under the terms of subclause (II) the 75 percent requirement must have been met in the aggregate for all articles entered during each preceding year (that is, starting with the year beginning on October 1, 2000, and ending on September 30, 2001) in order for preferential treatment to be applied to articles entered during the following year (that is, starting with the year that begins on October 1, 2001). Therefore, for purposes of claiming CBTPA preferential treatment on brassieres entered during the period from October 1, 2001, through September 30, 2002, the U.S. importer and the producer or entity controlling production must, for record keeping and related purposes, be aware of the standards Customs will apply in assessing compliance with the 75 percent requirement during that preceding year.

Accordingly, this document sets forth interim amendments to the Customs Regulations to implement the aggregate cost or value provisions of subclauses (II) and (III) of paragraph (2)(A)(iv) of amended section 213(b). In view of the proximity of the publication date of these interim regulations to October 1, 2001, Customs has issued instructions to the various ports to allow importers to amend their entries as may be necessary to take into account the new procedures and other requirements of these interim regulations. The regulatory amendments are discussed in more detail below.

Discussion of Interim Amendments

Section 10.223(a)(6)

This section has been modified by the addition of a proviso at the end to indicate that the requirements of new § 10.228 also must be met.

Section 10.223(a)(7)

Customs notes that § 10.223(a)(7) covers apparel articles that are constructed of fabrics or yarns that are considered to be in ''short supply'' for purposes of Annex 401 of the NAFTA. Customs further notes that the Annex 401 rule for articles classified in subheading 6212.10, HTSUS, requires only the performance of certain specified production processes (that is, ''both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties'') and includes no requirements regarding the source of the fabrics or yarns. Thus, as the Annex 401 rule for subheading 6212.10, HTSUS, includes no

designation of fabrics or yarns in ''short supply,'' Customs believes that brassieres of subheading 6212.10, HTSUS, are not covered by § 10.223(a)(7).

This view is supported by the decision by Congress to create a specific CBTPA provision providing for preferential treatment of brassieres (paragraph (2)(A)(iv) of amended § 213(b), which is reflected in § 10.223(a)(6) of the regulations). Were articles of subheading 6212.10, HTSUS, intended to be included with the articles falling within the scope of § 10.223(a)(7) which corresponds to paragraph (2)(A)(v)(I) of amended section 213(b), Congress would not have created a separate provision with specific fabric sourcing requirements which must be met in order for brassieres of subheading 6212.10, HTSUS, to receive preferential treatment under the CBTPA.

The text of § 10.223(a)(7) has been appropriately modified to reflect this interpretation.

New § 10.228

This new section addresses the aggregate cost or value provisions of subclauses (II) and (III) of paragraph (2)(A)(iv) of amended section 213(b). Although the text is in most cases self-explanatory, the following specific points are noted regarding this new provision:

1. The definitions of ''cost'' and ''declared customs value'' in paragraphs (a)(4) and (a)(5) are based in part on principles reflected in the Customs Regulations provisions that apply for purposes of subheading 9802.00.80, HTSUS (see, in particular, 19 CFR 10.17) and under the CBI (see, in particular, 19 CFR 10.196(c)). Moreover, as regards the definition of ''declared customs value'' in paragraph (a)(5), Customs notes that because the circumstance in which this terminology appears in the statute does not relate to a point at which a value is normally declared to U.S. Customs, the text includes multiple factual circumstances that reflect all conditions under which a value of fabric could exist for purposes of comparison to the ''cost'' of fabric components defined in paragraph (a)(4).

2. Paragraph (b)(1) reflects the 75 and 85 percent U.S. fabric component content requirements of paragraphs (2)(A)(iv)(II) and (III) of the statute and also requires the U.S. importer to include a specific documentation identifier assigned by Customs (see the discussion of paragraph (c) below) when filing the claim for preferential treatment. Customs considers a specific documentation identifier necessary. The identifier, which is to be noted on the entry summary or warehouse withdrawal, will serve both the importer and Customs. The identifier serves the importer as it is a method to indicate that the importer has at the time of entry a specific basis for claiming preferential treatment—that either the 75 or the 85 percent requirement has been met in the preceding year—for the brassieres being entered and thus will facilitate the entry and clearance process. The identifier serves Customs as it is a means by which Customs can tie a particular entry to the fact that a producer of brassieres or an entity controlling production of brassieres has met the 75 or 85 percent requirement. This is essential in view of the fact that compliance with the 75 or 85 percent requirement must be established by a producer or by an entity controlling production who might not be the U.S. importer.

3. Paragraph (b)(2) sets forth a number of general rules that Customs believes apply under paragraphs (b)(1)(i) and (b)(1)(ii) and for purposes of preparing and filing the documentation prescribed under paragraph (c) by the producer or entity controlling production. Paragraph (b)(2) also includes some examples to illustrate the application of those rules.

4. Paragraph (c) provides that, in order for an importer to be able to include the distinct and unique identifier on the entry summary or warehouse withdrawal as required under paragraph (b)(1)(iii), the producer or entity controlling production must have filed with Customs a declaration of compliance with the applicable 75 or 85 percent requirement. Paragraph (c) further provides that Customs will advise the filer of the identifier assigned to that declaration of compliance so that the filer may provide that number to the appropriate U.S. importers for inclusion on current entry summaries or warehouse withdrawals covering articles of the producer or entity controlling production in question. So that each affected importer might know what the appropriate identifier is prior to the arrival of the goods in the United States, paragraph (c) provides that the declaration of compliance should be filed at least 10 days prior to the date of the first shipment of the goods to the United States; Customs believes that this 10-day period should afford sufficient time for Customs to assign the identifier to the declaration of compliance and provide the identifier to the producer or entity controlling production and for the producer or entity to then provide it to the appropriate U.S. importer(s). Paragraph (c) also provides for the filing of an amended declaration of compliance or for following other appropriate procedures if the initial filing was based on an estimate because information for the whole year was not available at the time of the initial filing and the final data differs from the estimate, or if the producer or entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information. Finally, paragraph (c) identifies the specific Customs office at which the filing must take place and prescribes the form the declaration of compliance must take and includes instructions for its completion.

5. Paragraph (d) sets forth standards regarding the verification of a declaration of compliance and is similar to the rules that apply for purposes of verification of CBTPA preferential treatment claims under § 10.227 but with changes to reflect the current context. Paragraph (d) also specifies the nature of the accounting books and documents that Customs expects to see when verifying the statements made on a declaration of compliance. Finally, so that affected U.S. importers will know when Customs, after performing a verification of a declaration of compliance, has determined that articles of the producer or entity controlling production in question failed to meet the applicable 75 or 85 percent requirement, paragraph (d) provides that Customs will publish a notice of that determination in the **Federal Register**.

Part 163

The Appendix to Part 163 of the Customs Regulations (19 CFR Part 163), which sets forth a list of entry records (that is, records that are required by statute or regulation for the entry of merchandise—the ''(a)(1)(A)'' list), has been modified by the addition of a listing covering the CBTPA declaration of compliance for brassieres.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs

Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment proclaimed by the President under the United States-Caribbean Basin Trade Partnership Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this interim rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 1515–0226.

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

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

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

1. The general authority citation for Part 10 continues to read, and the specific authority citation for §§ 10.221 through 10.227 and §§ 10.231 through 10.237 is revised to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*

§ 10.222 [Amended]

2. In § 10.222, the introductory text is amended by removing the reference ''10.227'' and adding, in its place, the reference ''10.228''.

§ 10.223 [Amended]

3. In § 10.223, paragraph (a)(6) is amended by adding at the end before the semicolon the words '', provided that any applicable additional requirements set forth in § 10.228 are met'' and paragraph (a)(7) is amended by adding after the words ''Apparel articles'' at the beginning of the sentence the words '', other than articles described in paragraph (a)(6) of this section,''.

4. A new § 10.228 is added under the center heading ''Textile and Apparel Articles Under the United States-Caribbean Basin Trade Partnership Act'' to read as follows:

§ 10.228 Additional requirements for preferential treatment of brassieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in a CBTPA beneficiary country.

(2) *Entity controlling production.* ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in a CBTPA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabric components formed in the United States.* ''Fabric components formed in the United States'' means components that were knit to shape from yarns in the United States and components that were cut or otherwise produced in the United States from fabric that was formed in the United States by a weaving, knitting, needling, tufting, felting, entangling or other process, whether or not the components incorporate non-textile materials.

(4) *Cost.* ''Cost'' when used with reference to fabric components formed in the United States means:

(i) The price of the fabric components when last purchased, f.o.b. United States port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. United States port of exportation, the price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. United States port of exportation price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if that price is unreasonable, all reasonable expenses incurred in the growth, production, manufacture or other processing of the fabric components, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs incurred in transporting the components to the United States port of exportation.

(5) *Declared customs value.* ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabric components formed in the United States less the cost or value of any non-textile materials, and less the U.S. producer's expenses for cutting or other processing to create the components other than knitting to shape, that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, that is, fabric not incorporated in a fabric component formed in the United States, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents or, if the price is other than f.o.b. port of exportation, the price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing and other finishing operations applied to the fabric if not included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if that cost is unreasonable, all reasonable expenses incurred in the growth, production or manufacture of the fabric, including the cost or value of materials, general expenses and embroidering and dyeing, printing, and other finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing and other costs incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components that were purchased by the producer or entity controlling production, either the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents (or, if the price is other than f.o.b. port of exportation, the price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price) or that f.o.b. port of exportation price less the cost or value of any non-textile materials and less expenses for cutting or other processing to create the components other than knitting to shape, that the producer or entity controlling production can verify; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if that cost is unreasonable, all reasonable expenses incurred in the growth, production or manufacture of the fabric components, including the cost or value of materials and general expenses, but excluding the cost or value of any non-textile materials and excluding expenses for cutting or other processing to create the components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing and other costs incurred in transporting the components to the port of exportation.

(6) *Year.* ''Year'' means the 1-year period beginning on October 1, 2000, and ending on September 30, 2001, and any of the seven succeeding 1-year periods.

(7) *Entered.* ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General.* During the year that begins on October 1, 2001, and during any subsequent year, articles described in § 10.223(a)(6) of a producer or an entity controlling production will be eligible for preferential treatment only if:

(i) The aggregate cost of fabric components formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that were produced and entered during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric contained in all of those articles of that producer or that entity controlling production that were produced and entered during that year; or

(ii) In a case in which Customs determines that the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabric components formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that were produced and entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric contained in all of those articles of that producer or that entity controlling production that were produced and entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.225, the importer records on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by Customs to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must conform to the description set forth in § 10.223(a)(6) and must be both produced and entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Fabric components and fabrics that constitute findings or trimmings of foreign origin for purposes of § 10.223(c) are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(D) An article is considered to be produced in the year in which it reaches the condition in which it will be shipped to the United States;

(E) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production during the immediately preceding year, must first establish compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(F) Beginning October 1, 2001, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls;

(H) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(I) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a

declaration of compliance prepared by an entity controlling production; and

(J) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance.

(ii) *Examples.* The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. A CBTPA beneficiary country producer of articles that meet the description in § 10.223(a)(6) sends 50 percent of that production to the CBTPA region markets and the other 50 percent to the U.S. market; the cost of the fabric components formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the CBTPA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabric components formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. An entity controlling production of articles that meet the description in § 10.223(a)(6) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 3. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year the front subassemblies are shipped to a CBTPA beneficiary country where they are assembled with elastic straps less than 1 inch in width produced in an Asian country and other fabrics, components or materials produced in the CBTPA beneficiary country to form articles that meet the description in § 10.223(a)(6) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 percent standard, the foreign-origin elastic straps are to be disregarded entirely because they constitute findings or trimmings for purposes of § 10.223(c), and the front subassemblies are countable as components formed in the United States because they were used in the production of articles that were both produced and entered in the same year.

Example 4. A CBTPA beneficiary country producer's entire production of articles that meet the description in § 10.223(a)(6) is sent to a U.S. importer in two separate shipments, one covering articles produced and shipped in February and one covering articles produced and shipped in June of the same calendar year; the articles produced and shipped in February do not meet the minimum 75 percent standard but the two shipments, taken together, do meet that standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a Customs bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The CBTPA beneficiary country producer may not prepare a valid declaration of compliance for any portion of these two shipments because the articles in the first shipment did not meet the minimum 75 percent standard and the articles in the second shipment were not both produced and entered in the same year and therefore cannot be included either on a declaration of compliance that would apply to the articles of the first shipment or on a declaration of compliance that would apply to articles produced in a different year.

Example 5. A producer in the second year begins production of articles exclusively for the U.S. market that meet the description in § 10.223(a)(6); the articles do not meet the minimum 75 percent standard until the third year; the articles fail to meet the minimum 75 percent standard during the fourth year; and the articles do not attain the 85 percent standard until the sixth year. The producer's articles may not receive preferential treatment during the second year because there was no production in the immediately preceding year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 75 percent standard was not met in the immediately preceding (that is, second) year. The producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 75 percent standard in the immediately preceding (that is, third) year. The producer's articles may not receive preferential treatment during the fifth year because the 75 percent standard was not met in the immediately preceding (that is, fourth) year. The producer's articles may not receive preferential treatment during the sixth year because the 85 percent standard has become applicable and was not met in the immediately preceding (that is, fifth) year. The producer's articles are eligible for preferential treatment during the seventh year because the 85 percent standard was met in the immediately preceding (that is, sixth) year, and during that seventh year the 75 percent standard is applicable for purposes of determining whether the producer's articles are eligible for preferential treatment in the following (that is, eighth) year.

Example 6. An entity controlling production (Entity A) uses five CBTPA beneficiary country producers (Producers 1–5), all of whom produce only articles that meet the description in § 10.223(a)(6); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) who sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that he controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with Customs, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, Customs will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the declaration of compliance should be filed with Customs at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the Customs office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the Customs office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

BILLING CODE 4820–02–P

Declaration of Compliance for Brassieres (19 CFR 10.223(a)(6) and 10.228)	
1. Year beginning date: October 1, _____. Year ending date: September 30, _____.	Official U.S. Customs Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address:	Telephone number: _____ Facsimile number: _____ Importer identification number: _____
3. If the preparer is an entity controlling production, provide the following for each producer: Full name and address:	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabric components formed in the United States that were used in the production of all articles that were produced and entered during the year: _____	
5. Aggregate declared customs value of the fabric contained in all articles that were produced and entered during the year: _____	
6. I declare that the aggregate cost of fabric components formed in the United States that were used in the production of all articles that were produced and entered during the year as stated above was at least 75 ____ or 85 ____ (check one) percent of the aggregate declared customs value of the fabric contained in all articles that were produced and entered during the year as stated above.	
7. Authorized signature: _____ Date:	8. Name and title (print or type):

BILLING CODE 4820–02–C

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the CBTPA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were both produced and entered during the year identified in block 1;

(E) In block 6, the 75 percent space should be checked if that figure applies under paragraph (b)(1) of this section for the year identified in block 1, and the 85 percent space should be checked if that figure applies under paragraph (b)(2) of this section for the year identified in block 1; and

(F) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to Customs upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, U.S. Customs Service, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification Customs deems necessary. In the event that Customs for any reason is prevented from verifying the statements made on a declaration of compliance, Customs may deny any claim for preferential treatment made under § 10.225 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to Customs by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles described in § 10.223(a)(6) that were produced and exported to the United States and entered during the preference year in question, whether or not a claim for preferential treatment was made under § 10.225. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabric components formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabric components formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric or component. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric or component. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must identify the date of production of the finished article which must be referenced to the original purchase order or lot number covering the fabric or component used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the year and the inventory closing balance.

(2) *Notice of determination.* If, based on a verification of a declaration of compliance filed under this section, Customs determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, Customs will publish a notice of that determination in the **Federal Register**.

PART 163—RECORDKEEPING

1. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) list

* * * * *

IV. * * *

§ 10.228 CBTPA Declaration of Compliance for brassieres

* * * * *

Charles W. Winwood,

Acting Commissioner of Customs.

Approved: October 2, 2001.

Gordana S. Earp,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–24991 Filed 10–2–01; 11:16 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8965]

RIN 1545–AW86

Unified Partnership Audit Procedures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and amended by the Taxpayer Relief Act of 1997 (1997 Act) and the Internal Revenue Service

Restructuring and Reform Act of 1998 (1998 Act). The unified partnership audit procedures provide administrative rules for the auditing of a partnership and its partners.

EFFECTIVE DATES: These regulations are effective October 4, 2001.

FOR FURTHER INFORMATION CONTACT: William Heard at (202) 622–7950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–0790. Responses to these collections of information are both mandatory and voluntary and are required to receive a benefit.

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

The collections of information required by §§ 301.6222(b)–1, 301.6227(c)–1, and 301.6227(d)–1 are reflected on Form 8082 ''Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).'' The burden associated with them is reflected on that form.

The remaining collections of information: §§ 301.6222(a)–2, 301.6222(b)–2, 301.6222(b)–3(a)(2), 301.6223(b)–1(b), 301.6223(c)–1(a), 301.6223(e)–2(a), 301.6223(g)–1, 301.6223(h)–1, 301.6224(b)–1(b), 301.6224(c)–1(c), 301.6224(c)–3(c), 301.6229(b)–2(b), 301.6230(b)–1, 301.6230(e)–1, 301.6231(a)(1)–1(b), 301.6231(a)(7)–1, 301.6231(c)–1(d), 301.6231(c)–2(d), are not reflected on the Form 8082. The estimated annual burden per respondent varies from .25 hours to .75 hours, depending on individual circumstances, with an estimated average of .5 hours.

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

Background

These regulations finalize the regulations proposed December 13, 1984 (49 FR 48573), April 18, 1986 (51 FR 13231), and January 26, 1999 (64 FR 3886) and issued as temporary regulations on December 13, 1984 (49 FR 48536), March 5, 1987 (52 FR 6779) and January 26, 1999 (64 FR 3837). On January 26, 1999, proposed regulations (REG–106564–98) were published in the **Federal Register** (64 FR 3886). These regulations implemented the amendments to the unified partnership audit rules made by the 1997 and 1998 Acts. In addition, the preamble to those proposed regulations stated that the IRS planned on finalizing all of the unified partnership audit procedure regulations as part of this project (i.e., those regulations proposed on December 13, 1984, and April 18, 1986). No written comments were received in response to the January 26, 1999, notice of proposed rulemaking. Contemporaneous with the issuance of proposed regulations, Treasury and the IRS issued temporary regulations containing substantially similar rules. Taxpayers and the IRS have been operating under these rules since they were promulgated as temporary regulations.

The proposed regulations under §§ 301.6221 thru 301.6233 are adopted, as revised by this Treasury decision.

Explanation of Provisions

These final regulations contain regulations substantially similar to the previously proposed and currently effective temporary regulations under sections 6221 through 6231, inclusive. The substantive changes from the provisions in the proposed and temporary regulations are as follows:

1. Clarification of § 301.6223(a)–2T

Section 6223 requires the IRS to provide partners with notice of partnership proceedings. Under section 6223, the IRS must notify each partner of the beginning of an administrative proceeding by sending out a notice of the beginning of an administrative proceeding (NBAP). Under § 301.6223(a)–2T, if the IRS has issued an NBAP but decides not to propose any adjustments to the partnership return as filed, the IRS has 45 days to withdraw the NBAP. If the IRS does not withdraw the NBAP, however, it is not required to issue a notice of final partnership administrative adjustment (FPAA). This has led to some confusion among partnerships who postpone raising adjustments that may result in refunds or offsets while they await the outcome of the partnership-level audit. The issue of whether the IRS is required to issue an FPAA after issuance of an NBAP was litigated in *Atlantic Richfield Co. v. Dept. of Treasury*, 1996 U.S. Dist. LEXIS 19891, (D.D.C. Dec. 31, 1996). In that case, the court held that the IRS is not required to issue an FPAA even if it does not withdraw the NBAP. If the IRS does not issue an FPAA the partners will be unable to request favorable adjustments unless they have filed a timely administrative adjustment request (AAR) seeking a change in the treatment of partnership items. Accordingly, a sentence has been added to § 301.6223(a)–2 to explicitly inform taxpayers that the IRS does not have to issue an FPAA notwithstanding the issuance of (and failure to withdraw) an NBAP.

2. Elections Made Under § 301.6223(e)–2T

As stated above, section 6223 requires the IRS to provide partners with an NBAP and an FPAA. If the IRS fails to provide a partner with timely notice, the partner may, under § 301.6223(e)–2T(c)(2), elect to have either the FPAA, a court decision, a consistent settlement agreement, or conversion to nonpartnership items apply to that partner's partnership items. That election must be mailed within 45 days after ''that notice was mailed.'' Section 301.6223(e)–2T(c)(2). To remove any ambiguity regarding which notice triggers the right to make an election under section 6223(e), the final regulations amend the temporary regulations to make it clear that the 45-day period for making the election under section 6223(e) relates to the mailing of the FPAA, not the NBAP. The final regulations also clarify that, in accordance with *Wind Energy Technology Associates III v. Commissioner*, 94 T.C. 787 (1990), the issuance of an NBAP fewer than 120 days before the issuance of the FPAA does not invalidate the FPAA. Instead, a taxpayer will have 45 days from the mailing of the FPAA to make the elections provided in section 6223(e).

3. Effect of a Nonresident Alien Partner on the Small Partnership Exception of Section 6231(a)(1)(B)(i)

For purposes of the unified partnership audit rules, section 6231(a)(1)(B)(i) contains an exception from the definition of a *partnership* for certain small partnerships. Under this rule, a *partnership* does not include any partnership having 10 or fewer partners, each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. The proposed regulations stated that ''the 10 or fewer limitation * * * is applied to the number of natural persons (other than nonresident aliens) * * *'' Some practitioners have read this provision to mean that a

nonresident alien can be a partner in a small partnership that is not subject to the unified partnership audit rules, but that such partners are not counted toward the 10 partner limitation. To clarify that a partnership that has a nonresident alien partner cannot qualify for the small partnership exception of section 6231(a)(1)(B)(i), this parenthetical has been removed in § 301.6231(a)(1)–1(a)(1) of the final regulations.

4. Definition of Affected Item

Under the unified partnership audit rules, special procedures apply with respect to affected items, that is, items that are affected by partnership items. Section 301.6231(a)(5)–1T defines the term *affected item* as including, among other things, a partner's basis in the partner's partnership interest, the application of the section 465 at-risk rules to a partner, and any addition to tax or additional amount to the extent that they are not partnership items. Generally, affected items are directly assessed following partnership proceedings. If the item requires partner-level determinations, however, the IRS must assert changes to affected items in a partner-level deficiency proceeding following the completion of the partnership-level proceeding.

The IRS promulgated § 301.6231(a)(5)–1T before the enactment of section 469, the passive loss rules. Because the application of the passive loss rules to a partner is similar to the existing list of affected items, the final regulations provide that the application of the passive loss rules under section 469 to a partner with respect to a loss flowing from a partnership is an affected item to the extent it is not a partnership item.

5. Husbands and Wives Owning Partnership Interests Separately or Jointly

The temporary regulations under section 6231 describe the treatment of spouses under the unified partnership audit rules where: (1) a married couple owns an interest in a partnership as joint property; and (2) a married individual owns an interest in a partnership as separate property. Section 301.6231(a)(12)–1T applies when a married couple owns a partnership interest as joint property. It provides that, with limited exceptions, spouses holding a joint interest in a partnership are both treated as partners for purposes of subchapter C of chapter 63 of the Internal Revenue Code. This regulation interprets section 6231(a)(12), which provides that a husband and wife who have a joint interest in a partnership shall be treated as one person, except as otherwise provided in regulations.

Section 301.6231(a)(2)–1T applies when one spouse owns a partnership interest as separate property. It provides that, with limited exceptions, a spouse who files a joint return with an individual holding a separate interest in a partnership is treated as a partner for purposes of subchapter C of chapter 63. This regulation interprets section 6231(a)(2), which provides that the term *partner* includes any person whose income tax liability is determined in whole or in part by taking into account directly or indirectly partnership items.

In *Callaway* v. *Commissioner*, 231 F.3d 106 (2d Cir. 2000), the U.S. Court of Appeals for the Second Circuit considered § 301.6231(a)(2)–1T in holding that a wife was not bound by the outcome of a unified partnership proceeding where her husband's partnership items converted to nonpartnership items during the proceeding. The partnership interest at issue in *Callaway* was the husband's separate property. The court reasoned that the wife was treated as a partner under the regulation only because she filed a joint return with a person who owned a partnership interest; therefore, her tax liability was determined in part by taking into account partnership items. Once the husband's partnership items converted to nonpartnership items, the wife's tax liability was no longer affected by any partnership items and there was no longer any reason for her to participate in or be bound by the partnership proceedings.

In so holding, the Callaway court distinguished *Dubin* v. *Commissioner*, 99 T.C. 325 (1992). In *Dubin*, the Tax Court held that a wife was bound by the outcome of a unified partnership audit proceeding even though her husband's partnership items converted to nonpartnership items prior to the conclusion of the proceeding. In *Dubin*, unlike *Callaway*, the husband and wife owned the interest as joint property. Therefore, each was treated as having a share of partnership items that could be affected by the partnership proceeding independently of the other's share.

To resolve questions concerning the treatment of partnership items when a conversion event occurs with respect to a spouse, §§ 301.6231(a)(2)–1T and 301.6231(a)(12)–1T have been amended to be consistent with the *Callaway* opinion.

6. Partnership-Level Determinations of Penalties

Before the 1997 Act, the IRS could impose penalties on a partner only through the application of the deficiency procedures after the completion of a partnership-level proceeding. Forcing the IRS to open deficiency proceedings against the individual partners was inconsistent with the efficiency goal of the partnership audit rules. The 1997 Act cured this problem by providing that, for partnership taxable years ending after August 5, 1997, partnership-level proceedings include the determination of applicable penalties at the partnership level. Partners may now raise any partner-level defenses to the imposition of penalties only in a subsequent refund action.

The temporary regulations issued on January 26, 1999 (the 1999 Regulations) revised §§ 301.6221–1T, 301.6224(c)–3T(b)(1), and 301.6231(a)(6)–1T to conform those regulations to the statutory change. The revised regulations mandate that the partnership's penalty defenses are to be resolved during the partnership proceeding; individual defenses can only be brought by the partner in a subsequent refund action. In addition, the 1999 Regulations modify the computational adjustment rules to allow the IRS to assess penalties under those procedures. Finally, the 1999 Regulations specify that partnership-level determinations of a penalty may be the subject of a settlement agreement between the IRS and a partner in a partnership. If they are, then the IRS must offer consistent settlement terms with respect to those partnership-level determinations of the penalty (and other settled partnership items) to other partners in the partnership, subject to the limitations of section 6224(c)(2) and the regulations thereunder.

The final regulations make additional changes to the regulations under subchapter C of chapter 63 to conform those regulations to the new statutory treatment of penalties. Specifically, the final regulations amend § 301.6224(c)–1T to clarify that a settlement agreement between the tax matters partner and the IRS with respect to penalties, like a settlement agreement with respect to partnership items, binds partners other than notice partners and members of a notice group. Similarly, the final regulations amend § 301.6224(c)–2T to clarify that a settlement agreement between a pass-thru partner and the IRS with respect to penalties binds indirect partners, as would a settlement agreement with respect to partnership items. In addition, the final regulations amend § 301.6229(f)–1T to clarify that the rules applicable to partial settlements of partnership items also

apply to partnership-level determinations of penalties.

The final regulations also amend § 301.6226(f)–1T to reflect the 1997 Act changes to section 6226(f). The 1997 Act grants courts jurisdiction to determine penalties, additions to tax, or additional amounts relating to an adjustment to partnership items. The final regulations do not, however, amend § 301.6226(e)–1T to require that a partnership contesting an FPAA, in a United States district court or the United States Court of Federal Claims, deposit tax attributable to partnership-level determinations of penalties as a condition of bringing the proceeding. Because the 1997 Act amends section 6226(f), but not section 6226(e), it appears that Congress did not intend to require a deposit of penalties attributable to partnership-level determinations as a condition of bringing such an action. This rule is applicable to civil actions beginning on or after October 4, 2001.

Treasury and the IRS also amended § 301.6226(e)–1T to clarify that, in the case of a petition filed by a 5-percent group or pass-thru partner, the members of the group or the indirect partners holding an interest in the partnership through the pass-thru partner must deposit the aggregate amount by which their tax liabilities would be increased if the treatment of partnership items on the partners' returns were made consistent with the treatment of partnership items on the partnership return. This clarification is applicable to civil actions beginning on or after April 2, 2002.

7. Applicability Dates

This document contains final regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by TEFRA, and amended by the 1997 Act and the 1998 Act. Proposed regulations were published on December 13, 1984, April 18, 1986, and January 26, 1999. Temporary regulations were published on December 13, 1984 (effective December 10, 1984), March 5, 1987 (effective September 3, 1982), and January 26, 1999 (effective January 26, 1999). The final regulations published in this document apply to unified partnership proceedings with respect to partnership taxable years beginning on or after October 4, 2001. For unified partnership proceedings with respect to partnership taxable years beginning before October 4, 2001, taxpayers and practitioners are directed to the temporary regulations that were in effect for the period in question.

Effective Date

These regulations are effective as of October 4, 2001.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in § 301.6229(b)–2(b) does not have a significant impact on a substantial number of small entities. This certification is based on the fact that the notification is only required for the few partnerships whose Tax Matters Partners are debtors in a bankruptcy proceeding under Title 11 of the United States Code. Moreover, the time required to prepare and file the notification is minimal and will not have a significant impact on those few small entities that file the notification. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required for § 301.6229(b)–2(b).

The other information collections imposed by this Treasury decision are not subject to the Regulatory Flexibility Act because the notice of proposed rulemaking with respect to these requirements was published prior to March 29, 1996. Nevertheless, we believe that these information collections will not have a significant impact on a substantial number of small entities. This is based on the fact that most of the information collections only apply to entities under audit, and the remaining information collections apply only to a small number of small businesses, namely small partnerships who elect to have the provisions of subchapter C of chapter 63 apply, and small business partners that report partnership items inconsistently with the reporting of that item on the partnership return. Moreover, the time required to prepare and file the required statements is minimal on those few small entities that file the statements.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Horace Howells, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

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

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 301—-PROCEDURE AND ADMINISTRATION

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

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

Section 301.6231(c)–1 also issued under 26 U.S.C. 6231(c)(1) and (3).

Section 301.6231(c)–2 also issued under 26 U.S.C. 6231(c)(1) and (3). * * *

Par. 2. Section 301.6221–1 is added to read as follows:

§ 301.6221–1 Tax treatment determined at partnership level.

(a) *In general.* A partner's treatment of partnership items on the partner's return may not be changed except as provided in sections 6222 through 6231 and the regulations thereunder. Thus, for example, if a partner treats an item on the partner's return consistently with the treatment of the item on the partnership return, the IRS generally cannot adjust the treatment of that item on the partner's return except through a partnership-level proceeding. Similarly, the taxpayer may not put partnership items in issue in a proceeding relating to nonpartnership items. For example, the taxpayer may not offset a potential increase in taxable income based on changes to nonpartnership items by a potential decrease based on partnership items.

(b) *Restrictions inapplicable after items become nonpartnership items.* Section 6221 and paragraph (a) of this section cease to apply to items arising from a partnership with respect to a partner when those items cease to be partnership items with respect to that partner under section 6231(b).

(c) *Penalties determined at partnership level.* Any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item

shall be determined at the partnership level. Partner-level defenses to such items can only be asserted through refund actions following assessment and payment. Assessment of any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item shall be made based on partnership-level determinations. Partnership-level determinations include all the legal and factual determinations that underlie the determination of any penalty, addition to tax, or additional amount, other than partner-level defenses specified in paragraph (d) of this section.

(d) *Partner-level defenses.* Partner-level defenses to any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item may not be asserted in the partnership-level proceeding, but may be asserted through separate refund actions following assessment and payment. See section 6230(c)(4). Partner-level defenses are limited to those that are personal to the partner or are dependent upon the partner's separate return and cannot be determined at the partnership level. Examples of these determinations are whether any applicable threshold underpayment of tax has been met with respect to the partner or whether the partner has met the criteria of section 6664(b) (penalties applicable only where return is filed), or section 6664(c)(1) (reasonable cause exception) subject to partnership-level determinations as to the applicability of section 6664(c)(2).

(e) *Cross-references.* See §§ 301.6231(c)–1 and 301.6231(c)–2 for special rules relating to certain applications and claims for refund based on losses, deductions, or credits from abusive tax shelter partnerships.

(f) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6221–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6221–1T [Removed]

Par. 2a. Section 301.6221–1T is removed.

Par. 3. Section 301.6222(a)–1 is added to read as follows:

§ 301.6222(a)–1 Consistent treatment of partnership items.

(a) *In general.* The treatment of a partnership item on the partner's return must be consistent with the treatment of that item by the partnership on the partnership return in all respects including the amount, timing, and characterization of the item.

(b) *Treatment must be consistent with partnership return.* The treatment of a partnership item on the partner's return must be consistent with the treatment of that item on the partnership return. Thus, a partner who treats an item consistently with a schedule or other information furnished to the partner by the partnership has not satisfied the requirement of paragraph (a) of this section if the treatment of that item is inconsistent with the treatment of the item on the partnership return actually filed. For rules relating to the election to be treated as having reported the inconsistency where the partner treats an item consistently with an incorrect schedule, see § 301.6222(b)–3.

(c) *Examples.* The following examples illustrate the principles of this section:

Example 1. B is a partner of Partnership P. Both B and P use the calendar year as the taxable year. In December 2001, P receives an advance payment for services to be performed in 2002 and reports this amount as income for calendar year 2001. However, B reports B's distributive share of this amount on B's income tax return for 2002 and not on B's return for 2001. B's treatment of this partnership item is inconsistent with the treatment of the item by P.

Example 2. Partnership P incurred certain start-up costs before P was actively engaged in its business. P capitalized these costs. C, a partner in P, deducted C's proportionate share of these start-up costs. C's treatment of the partnership expenditure is inconsistent with the treatment of that item by P.

Example 3. D is a partner in partnership P. P reports a loss of $100,000 on its return, $5,000 of which it reports on the Schedule K–1 attached to its return as D's distributive share. However, P reports $15,000 as D's distributive share of P's loss on the Schedule K–1 furnished to D. D reports the $15,000 loss on D's income tax return. D has not satisfied the consistent reporting requirement. See, however, § 301.6222(b)–3 for an election to be treated as having reported the inconsistency.

(d) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001.

For years beginning prior to October 4, 2001, see § 301.6222(a)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6222(a)–1T [Removed]

Par. 3a. Section 301.6222(a)–1T is removed.

Par. 4. Section 301.6222(a)–2 is added to read as follows:

§ 301.6222(a)–2 Application of consistent reporting and notification rules to indirect partners.

(a) *In general.* The consistent reporting requirement of § 301.6222(a)–1 is generally applied with respect to the source partnership. For purposes of this section, the term *source partnership* means the partnership (within the meaning of section 6231(a)(1)) from which the partnership item originates.

(b) *Indirect partner files consistently with source partnership.* An indirect partner who treats an item from a source partnership in a manner consistent with the treatment of that item on the source partnership's return satisfies the consistency requirement of section 6222(a) regardless of whether the indirect partner treats that item in a manner consistent with the treatment of that item by the pass-thru partner through which the indirect partner holds the interest in the source partnership. Under these circumstances, therefore, the Internal Revenue Service shall not send to the indirect partner the notice described in section 6231(b)(1)(A).

(c) *Indirect partner files inconsistently with source partnership*—(1) *Indirect partner notifies the Internal Revenue Service of inconsistency.* An indirect partner who—

(i) Treats an item from a source partnership in a manner inconsistent with the treatment of that item on the source partnership's return; and

(ii) Files a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(c)–1, shall not be subject to a computational adjustment to conform the treatment of that item to the treatment of that item on the return of the source partnership.

(2) *Indirect partner does not notify the Internal Revenue Service of inconsistency.* Except as provided in paragraph (b)(3) of this section, an indirect partner who—

(i) Treats an item from a source partnership in a manner inconsistent with the treatment of that item on the source partnership's return; and

(ii) Fails to file a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)–1, is subject to a computational adjustment to conform the treatment of that item to the treatment of that item on the return of the source partnership.

(3) *Indirect partner files consistently with a pass-thru partner that notifies the Internal Revenue Service of the inconsistency.* If an indirect partner treats an item from a source partnership in a manner consistent with the treatment of that item by a pass-thru partner through which the indirect partner holds the interest in the source partnership and that pass-thru partner—

(i) Treats that item in a manner inconsistent with the treatment of that item on the source partnership's return; and

(ii) Files a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)–1, the indirect partner is not subject to a computational adjustment to conform to the treatment of that item on the return of the source partnership.

(d) *Examples.* The following examples illustrate the principles of this section:

Example 1. One of the partners in Partnership A is Partnership B, which has four equal partners C, D, E, and F. Both A and B are partnerships within the meaning of section 6231(a)(1). On its return, A reports $100,000 as B's distributive share of A's ordinary income. B, however, reports only $80,000 as its distributive share of the income and does not notify the Internal Revenue Service of this inconsistent treatment with respect to A. C reports $20,000 as its distributive share of the item. Although C reports the item consistently with B, C is subject to a computational adjustment to conform the treatment of that item on C's return to the treatment of that item on A's return.

Example 2. Assume the same facts as in Example 1, except that B notified the Internal Revenue Service of its inconsistent treatment with respect to source partnership A. C is not subject to a computational adjustment.

Example 3. Assume the same facts as in *Example 1.* D reports only $15,000 as D's distributive share of the income and does not report the inconsistency. F reports only $9,000 as its distributive share of the item but reports this inconsistency with respect to source partnership A. D is subject to a computational adjustment to conform the treatment of that item on D's return to the treatment of that item on A's return. F is not subject to a computational adjustment.

Example 4. Assume the same facts as in *Example 3,* except that F reported the inconsistency with respect to B and did not report the inconsistency with respect to source partnership A. F is subject to a computational adjustment to conform the treatment of that item on F's return to the treatment of that item on A's return.

Example 5. Assume the same facts as in Example 1. E reports $25,000 as its distributive share of the item. Regardless of whether E reports the inconsistency between its treatment of the item and that by B, E is neither subject to a computational adjustment to conform E's treatment of that item to that of B nor subject to the notice described in section 6231(b)(1)(A) with respect to any such notification of inconsistent treatment.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6222(a)–2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6222(a)–2T [Removed]

Par. 4a. Section 301.6222(a)–2T is removed.

Par. 5. Section 301.6222(b)–1 is added to read as follows:

§ 301.6222(b)–1 Notification to the Internal Revenue Service when partnership items are treated inconsistently.

(a) *In general.* The statement identifying an inconsistency described in section 6222(b)(1)(B) shall be filed by filing the form prescribed for that purpose in accordance with the instructions accompanying that form.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6222(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6222(b)–1T [Removed]

Par. 5a. Section 301.6222(b)–1T is removed.

Par. 6. Section 301.6222(b)–2 is added to read as follows:

§ 301.6222(b)–2 Effect of notification of inconsistent treatment.

(a) *In general.* Generally, if a partner treats a partnership item on the partner's return in a manner inconsistent with the treatment of that item on the partnership return, the Internal Revenue Service may make a computational adjustment to conform the treatment of the item by the partner with the treatment of that item on the partnership return. Any additional tax resulting from that computational adjustment may be assessed without either the commencement of a partnership proceeding or notification to the partner that all partnership items arising from that partnership will be treated as nonpartnership items. However, if a partner notifies the Internal Revenue Service of the inconsistent treatment of a partnership item in the manner prescribed in § 301.6222(b)–1, the Internal Revenue Service generally may not make an adjustment with respect to that partnership item unless the Internal Revenue Service—

(1) Conducts a partnership-level proceeding; or

(2) Notifies the partner under section 6231(b)(1)(A) that all partnership items arising from that partnership will be treated as nonpartnership items. See, however, §§ 301.6231(c)–1 and 301.6231(c)–2 for special rules relating to certain applications and claims for refund based on losses, deductions, or credits from abusive tax shelter partnerships.

(b) *Partner protected only to extent of notification.* (1) A partner who reports the inconsistent treatment of partnership items on the partner's return is protected from computational adjustments under section 6222(c) only with respect to those partnership items the inconsistent treatment of which is reported. Thus, if a partner notifying the Internal Revenue Service with respect to one item fails to report the inconsistent treatment of another item, the partner is subject to a computational adjustment with respect to that other item.

(2) The following example illustrates the principles of this paragraph (b):

Example. Partner A of Partnership P treats a deduction and a capital gain arising from P on A's return in a manner that is inconsistent with the treatment of those items by P. A reports the inconsistent treatment of the deduction but not of the gain. A is subject to a computational adjustment under section 6222(c) with respect to the gain.

(c) *Adjustments in a separate proceeding not limited to conforming adjustments.* (1) If the Internal Revenue Service conducts a separate proceeding with a partner whose partnership items are treated as nonpartnership items under section 6231(b), the Internal Revenue Service is not limited to making adjustments that merely conform the partner's return to the partnership return.

(2) *Example.* The following example illustrates the principles of this paragraph (c):

Example. Partnership P allocates to E, one of its partners, a loss of $8,000. E, however, claims a loss of $9,000 and reports the inconsistent treatment. The Internal Revenue Service notifies E that it will treat all of E's partnership items arising from P as nonpartnership items. As a result of a separate proceeding with E, the Internal Revenue Service may issue a deficiency notice which could include reducing the loss to $3,000.

(d) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6222(b)–2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6222(b)–2T [Removed]

Par. 6a. Section 301.6222(b)–2T is removed.

Par. 7. Section 301.6222(b)–3 is added to read as follows:

§ 301.6222(b)–3 Partner receiving incorrect schedule.

(a) *In general.* A partner shall be treated as having complied with section 6222(b)(1)(B) and § 301.6222(b)–1 with respect to a partnership item if the partner—

(1) Demonstrates that the treatment of the partnership item on the partner's return is consistent with the treatment of that item on the schedule prescribed by the Internal Revenue Service and furnished to the partner by the

partnership showing the partner's share of income, credits, deductions, etc.; and

(2) Elects in accordance with the rules prescribed in paragraph (b) of this section to have this section apply with respect to that item.

(b) *Election provisions*—(1) *Time and manner of making election.* The election described in paragraph (a) of this section shall be made by filing a statement with the Internal Revenue Service office issuing the notice of computational adjustment within 30 days after the notice is mailed to the partner.

(2) *Contents of statement.* The statement described in paragraph (b)(1) of this section shall be—

(i) Clearly identified as an election under section 6222(b)(2);

(ii) Signed by the partner making the election; and

(iii) Accompanied by copies of the schedule furnished to the partner by the partnership and of the notice of computational adjustment. The partner need not enclose a copy of the notice of computational adjustment, however, if the partner clearly identifies the notice of computational adjustment. Generally, the requirement described in paragraph (a)(1) of this section will be satisfied by attaching to the statement a copy of the schedule furnished to the partner by the partnership. However, if it is not clear from the information contained on the schedule that the treatment of the partnership item on the schedule is consistent with the partner's treatment of such item on the partner's return the statement shall also include an explanation of how the treatment of such item on the schedule is consistent with the treatment on the partner's return with respect to the characterization, timing, and amount of such item.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6222(b)–3T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6222(b)–3T [Removed]

Par. 7a. Section 301.6222(b)–3T is removed.

Par. 8. Section 301.6223(a)–1 is added to read as follows:

§ 301.6223(a)–1 Notice sent to tax matters partner.

(a) *In general.* For purposes of subchapter C of chapter 63 of the Internal Revenue Code, a notice is treated as mailed to the tax matters partner on the earlier of—

(1) The date on which the notice is mailed to ''THE TAX MATTERS PARTNER'' at the address of the partnership (as provided on the partnership return, except as updated under § 301.6223(c)–1); or

(2) The date on which the notice is mailed to the person who is the tax matters partner at the address of that person (as provided on the partner's return, except as updated under § 301.6223(c)–1) or the partnership. See § 301.6223(c)–1 for rules relating to the information used by the Internal Revenue Service in providing notices, etc.

(b) *Example.* The provisions of this section may be illustrated by the following example:

Example. Partnership P designates B as its tax matters partner in accordance with § 301.6231(a)(7)–1(b). On December 1 a notice of the beginning of an administrative proceeding is mailed to ''THE TAX MATTERS PARTNER'' at the address of P. On January 10, a copy of the notice is mailed to B at B's address. December 1 is treated as the date that the notice was mailed to the tax matters partner.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(a)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(a)–1T [Removed]

Par. 8a. Section 301.6223(a)–1T is removed.

Par. 9. Section 301.6223(a)–2 is added to read as follows:

§ 301.6223(a)–2 Withdrawal of notice of the beginning of an administrative proceeding.

(a) *In general.* If the Internal Revenue Service, within 45 days after the day on which the notice specified in section 6223(a)(1) is mailed to the tax matters partner, decides not to propose any adjustments to the partnership return as filed, the Internal Revenue Service may withdraw the notice specified in section 6223(a)(1) by mailing a letter to that effect to the tax matters partner within that 45-day period. Even if the Internal Revenue Service does not withdraw the notice specified in section 6223(a)(1), the Internal Revenue Service is not required to issue a notice of final partnership administrative adjustment. If the Internal Revenue Service withdraws the notice specified in section 6223(a)(1), neither the Internal Revenue Service nor the tax matters partner is required to furnish any notice with respect to that proceeding to any other partner. Except as provided in paragraph (b) of this section, a notice specified in section 6223(a)(1) which has been withdrawn shall be treated for purposes of subchapter C of chapter 63 of the Internal Revenue Code as if that notice had never been mailed to the tax matters partner.

(b) *Internal Revenue Service may not reissue notice except under certain circumstances.* If the notice specified in section 6223(a)(1) was mailed to the tax matters partner with respect to a partnership taxable year and that notice was later withdrawn as provided in paragraph (a) of this section, the Internal Revenue Service shall not mail a second notice specified in section 6223(a)(1) with respect to that taxable year unless—

(1) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact;

(2) The prior proceeding involved the misapplication or erroneous interpretation of an established Internal Revenue Service position existing at the time of the previous examination, or the failure to make an adjustment based on such a position; or

(3) Other circumstances exist which indicate that failure to reissue the notice would be a serious administrative omission.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(a)–2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(a)–2T [Removed]

Par. 9a. Section 301.6223(a)–2T is removed.

Par. 10. Section 301.6223(b)–1 is added to read as follows:

§ 301.6223(b)–1 Notice group.

(a) *In general.* If a group of partners having in the aggregate a 5 percent or more interest in the profits of a partnership requests and designates one of their members to receive the notices described in section 6223(a)(1) and (2), the member so designated shall be treated as a partner to whom section 6223(a) applies. Thus, the designated representative is entitled to receive any notice described in section 6223(a) that is mailed to the tax matters partner 30 days or more after the day on which the Internal Revenue Service receives the request from the group.

(b) *Request for notice*—(1) *In general.* The Internal Revenue Service shall mail to the member of the notice group designated to receive such notice any notice described in section 6223(a) that is mailed to the tax matters partner 30 days or more after the day on which the Internal Revenue Service receives the request for notice from the group if such request for notice is made in accordance

with the rules prescribed in this paragraph (b).

(2) *Content of request.* The request for notice from a notice group shall—

(i) Identify the partnership by name, address, and taxpayer identification number;

(ii) Specify the taxable year or years for which the notice group is formed;

(iii) Designate the member of the group to receive the notices;

(iv) Set out the name, address, taxpayer identification number, and profits interest of each member of the group; and

(v) Be signed by all partners comprising the notice group.

(3) *Place for filing.* The request for notice from a notice group generally must be filed with the service center where the partnership return is filed. However, if the notice group representative knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed that notice.

(4) *Copy to be sent to the tax matters partner.* A copy of the request for notice from a notice group shall be provided to the tax matters partner by the notice group representative within 30 days after the request is filed with the Internal Revenue Service.

(5) *Years covered by request.* A request for notice by a notice group may relate only to partnership taxable years that have ended before the request is filed. A request, however, may relate to more than one partnership taxable year if the 5 percent or more profits interest requirement of section 6223(b)(2) is satisfied for each year to which the request relates.

(c) *Composition of notice group*—(1) *In general.* A notice group shall be comprised only of persons who were partners at some time during the partnership taxable year for which the group is formed. If a notice group is formed for more than one taxable year, each member of the group must have been a partner at some time during at least one of the taxable years for which the group is formed. A notice group may include a partner entitled to separate notice. See section 6231(d) and § 301.6231(d)–1 for rules relating to determining the interest of a partner in the profits of a partnership for a partnership taxable year for purposes of section 6223(b). See paragraph (c)(6) of this section for rules relating to indirect and pass-thru partners.

(2) *Partner may be a member of only one group.* A partner cannot be a member of more than one notice group with respect to the same partnership for the same partnership taxable year. See paragraph (c)(6) of this section for rules relating to indirect and pass-thru partners.

(3) *Partner may join group after formation.* A partner may join a notice group at any time after the formation of that group by filing with the Internal Revenue Service office where the notice group filed its request a statement that it is joining the notice group. The statement shall identify the partner joining the notice group, the partnership, and the members of the notice group by name, address, and taxpayer identification number and shall be signed by the joining partner. A copy of the statement shall be provided by the joining partner to both the tax matters partner and the notice group representative within 30 days after the request is filed with the Internal Revenue Service. The partner shall become a member of the notice group for each partnership taxable year for which the group was formed and for which the partner was a partner at any time during such partnership taxable year.

(4) *Date on which a partner becomes a member of notice group.* A partner shall become a member of a notice group on the 30th day after the day on which the Internal Revenue Service receives—

(i) A request for notice from a notice group that identifies that partner as a member of that notice group; or

(ii) A statement filed in accordance with paragraph (c)(3) of this section that states that the partner is joining the notice group.

(5) *No withdrawal from notice group.* A partner who has signed a notice group request filed with the Internal Revenue Service remains a member of that notice group until the group terminates. A partner cannot withdraw from the notice group.

(6) *Indirect and pass-thru partners*—(i) *Pass-thru partners and unidentified indirect partners.* A pass-thru partner may become a member of a notice group as provided in this section. For purposes of applying the aggregate interest requirement specified in paragraph (a) of this section to a pass-thru partner, the partnership interest held by the pass-thru partner shall not include any interest held through the pass-thru partner by an indirect partner that has been identified as provided in section 6223(c)(3) and § 301.6223(c)–1 before the date on which the pass-thru partner becomes a member of the notice group.

(ii) *Indirect partners identified before the pass-thru partner joins a notice group.* An indirect partner may become a member of a notice group with respect to a partnership taxable year only if—

(A) The indirect partner held an interest in the partnership (either directly or through one or more pass-thru partners) at some time during that taxable year; and

(B) The indirect partner was identified as provided in section 6223(c)(3) and § 301.6223(c)–1 on or before the date on which the pass-thru partner became a member of a notice group.

(d) *Termination of notice group.* Unless the original request for notice from the notice group or a subsequent statement filed by the representative (in accordance with paragraphs (b)(3) and (4) of this section) designates a successor to the designated group representative, the group terminates if the representative dies (or, in the case of an entity, if the entity is dissolved), resigns, or is adjudicated incompetent.

(e) *Notice group is not a 5-percent group.* The forming of a notice group under this section does not constitute the forming of a 5-percent group for purposes of litigation. A notice group is formed solely for the purpose of receiving notices. A 5-percent group is formed solely for the purpose of filing a petition for judicial review or appealing a judicial determination. See § 301.6226(b)–1. Thus, a member of a notice group may choose not to join a 5-percent group formed by other members of the notice group.

(f) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(b)–1T [Removed]

Par. 10a. Section 301.6223(b)–1T is removed.

Par. 11. Section 301.6223(c)–1 is added to read as follows:

§ 301.6223(c)–1 Additional information regarding partners furnished to the Internal Revenue Service.

(a) *In general.* In addition to the names, addresses, and profits interests as shown on the partnership return, the Internal Revenue Service will use additional information as provided in this section for purposes of administering subchapter C of chapter 63 of the Internal Revenue Code.

(b) *Procedure for furnishing additional information*—(1) *In general.* Any person may furnish additional information at any time by filing a

written statement with the Internal Revenue Service. However, the information contained in the statement will be considered for purposes of determining whether a partner is entitled to a notice described in section 6223(a) only if the Internal Revenue Service receives the statement at least 30 days before the date on which the Internal Revenue Service mails the notice to the tax matters partner. Similarly, information contained in the statement generally will not be taken into account for other purposes by the Internal Revenue Service until 30 days after the statement is received.

(2) *Where statement must be filed.* A statement furnished under this section generally must be filed with the service center where the partnership return is filed. However, if the person filing the statement knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed such notice.

(3) *Contents of statement.* The statement shall—

(i) Identify the partnership, each partner for whom information is supplied, and the person supplying the information by name, address, and taxpayer identification number;

(ii) Explain that the statement is furnished to correct or supplement earlier information with respect to the partners in the partnership;

(iii) Specify the taxable year to which the information relates;

(iv) Set out the corrected or additional information; and

(v) Be signed by the person supplying the information.

(c) *No incorporation by reference to previously furnished documents.* Incorporation by reference of information contained in another document previously furnished to the Internal Revenue Service will not be given effect for purposes of section 6223(c) or 6229(e). For example, reference to a return filed by a pass-thru partner which contains identifying information with respect to the indirect partners of that pass-thru partner is not sufficient to identify the indirect partners unless a copy of the document referred to is attached to the statement. Furthermore, reference to a prior general notification to the Internal Revenue Service that a partner who would otherwise be the tax matters partner is a debtor in a bankruptcy proceeding or has had a receiver appointed for the partner in a receivership proceeding is not sufficient unless a copy of the notification document referred to is attached to the statement.

(d) *Information supplied by a person other than the tax matters partner.* The Internal Revenue Service may require appropriate verification in the case of information furnished by a person other than the tax matters partner. The 30-day period referred to in paragraph (b)(1) of this section shall not begin until that verification is supplied.

(e) *Power of attorney*—(1) *In general.* This paragraph (e) applies to powers of attorney with respect to proceedings under subchapter C of chapter 63 of the Internal Revenue Code (chapter 63C) that begin on or after January 2, 2002.

(2) *Specifically for purposes of subchapter C of chapter 63 of the Internal Revenue Code.* A power of attorney specifically for purposes of subchapter C of chapter 63 of the Internal Revenue Code shall be furnished in accordance with paragraph (b)(2) of this section.

(3) *Existing power of attorney.* A power of attorney granted to another person by a partner for other tax purposes shall not be given effect for purposes of subchapter C of chapter 63 unless the partner specifically requests that the power be given such effect in a statement furnished to the Internal Revenue Service in accordance with paragraph (b) of this section.

(f) *Internal Revenue Service may use other information.* In addition to the information on the partnership return and that supplied on statements filed under this section, the Internal Revenue Service may use other information in its possession (for example, a change in address reflected on a partner's return) in administering subchapter C of chapter 63 of the Internal Revenue Code. However, the Internal Revenue Service is not obligated to search its records for information not expressly furnished under this section.

(g) *Effective date.* Except as provided in paragraph (e)(1) of this section, this section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(c)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(c)–1T [Removed]

Par. 11a. Section 301.6223(c)–1T is removed.

Par. 12. Section 301.6223(e)–1 is added to read as follows:

§ 301.6223(e)–1 Effect of Internal Revenue Service's failure to provide notice.

(a) *Notice group.* Section 6223(e)(1)(B)(ii) applies with respect to a notice group only if the request for notice described in § 301.6223(b)–1 is received by the Internal Revenue Service at least 30 days before the notice is mailed to the tax matters partner.

(b) *Indirect partners*—(1) *In general.* For purposes of section 6223(e), the Internal Revenue Service's failure to provide notice to a pass-thru partner entitled to notice under section 6223(b) is deemed a failure to provide notice to indirect partners holding an interest in the partnership through the pass-thru partner. However, this rule does not apply if the indirect partner—

(i) Receives notice from the Internal Revenue Service;

(ii) Is identified as provided in section 6223(c)(3) and § 301.6223(c)–1 at least 30 days before the notice is mailed to the tax matters partner; or

(iii) Is a member of a notice group entitled to notice under paragraph (a) of this section.

(2) *Examples.* The provisions of paragraph (b)(1) of this section may be illustrated by the following examples:

Example 1. Partnership ABC has as one of its partners, A, a partnership with three partners, X, Y, and Z. ABC does not have more than 100 partners, and partnership A is entitled to notice under section 6223(a). In addition, Z was identified as provided in section 6223(c)(3) and § 301.6223(c)–1 on May 1, 2002. The Internal Revenue Service mailed a notice to the tax matters partner of ABC on July 1, 2002, but failed to provide notice to partnership A. Notwithstanding the Internal Revenue Service's notice to the tax matters partner, the Internal Revenue Service is deemed to have failed to provide notice to X and Y. The Internal Revenue Service's failure to provide notice to A, however, has no effect on Z; whether notice was provided to Z is determined independently.

Example 2. Assume the same facts as in *Example 1*, except that the Internal Revenue Service provided notice to partnership A but did not provide separate notice to Z. Notwithstanding the Internal Revenue Service's notice to partnership A, the Internal Revenue Service is deemed to have failed to provide notice to Z.

Example 3. Assume the same facts as in *Example 1*, except that partnership ABC has more than 100 partners and partnership A is entitled to notice under section 6223(b) because it had at least a 1 percent profits interest in partnership ABC. In addition, X became a member of a notice group on June 1, 2002, and the Internal Revenue Service mailed a notice to the designated member of that notice group. The Internal Revenue Service also mailed a separate notice to Z. The Internal Revenue Service's failure to provide notice to partnership A only affects Y, who is deemed not to have been provided notice by the Internal Revenue Service.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(e)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(e)–1T [Removed]

Par. 12a. Section 301.6223(e)–1T is removed.

Par. 13. Section 301.6223(e)–2 is added to read as follows:

§ 301.6223(e)–2 Elections if Internal Revenue Service fails to provide timely notice.

(a) *In general.* This section applies in any case in which the Internal Revenue Service fails to timely mail any notice described in section 6223(a) of the Internal Revenue Code to a partner entitled to such notice within the period specified in section 6223(d). The failure to issue any notice within the period specified in section 6223(d) does not invalidate the notice of the beginning of an administrative proceeding or final partnership administrative adjustment (FPAA). An untimely FPAA enables the recipient of the untimely notice to make the elections described in paragraphs (b), (c), and (d) of this section. The period within which to make the elections described in paragraphs (b), (c), and (d) of this section commences with the mailing of an FPAA to the partner. In the absence of an election, paragraphs (b) and (c) of this section provide for the treatment of a partner's partnership items.

(b) *Proceeding finished.* If at the time the Internal Revenue Service mails the partner an FPAA—

(1) The period within which a petition for review of the FPAA under section 6226 may be filed has expired and no petition has been filed; or

(2) The decision of a court in an action begun by such a petition has become final, the partner may elect in accordance with paragraph (d) of this section to have that adjustment, that decision, or a settlement agreement described in section 6224(c)(2) with respect to the partnership taxable year to which the adjustment relates apply to that partner. If the partner does not make an election in accordance with paragraph (d) of this section, the partnership items of the partner for the partnership taxable year to which the proceeding relates shall be treated as having become nonpartnership items as of the day on which the Internal Revenue Service mails the partner the FPAA.

(c) *Proceeding still going on.* If at the time the Internal Revenue Service mails the partner an FPAA, paragraphs (b)(1) and (2) of this section do not apply, the partner shall be a party to the proceeding unless the partner elects, in accordance with paragraph (d) of this section, to have—

(1) A settlement agreement described in section 6224(c)(2) with respect to the partnership taxable year to which the proceeding relates apply to the partner; or

(2) The partnership items of the partner for the partnership taxable year to which the proceeding relates treated as having become nonpartnership items as of the day on which the Internal Revenue Service mails the partner the FPAA.

(d) *Election*—(1) *In general.* The election described in paragraph (b) or (c) of this section shall be made in the manner prescribed in this paragraph (d). The election shall apply to all partnership items for the partnership taxable year to which the election relates.

(2) *Time and manner of making election.* The election shall be made by filing a statement with the Internal Revenue Service office mailing the FPAA within 45 days after the date on which the FPAA was mailed to the partner making the election.

(3) *Contents of statement.* The statement shall—

(i) Be clearly identified as an election under section 6223(e)(2) or (3);

(ii) Specify the election being made (that is, application of final partnership administrative adjustment, court decision, consistent settlement agreement, or nonpartnership item treatment);

(iii) Identify the partner making the election and the partnership by name, address, and taxpayer identification number;

(iv) Specify the partnership taxable year to which the election relates; and

(v) Be signed by the partner making the election.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(e)–2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(e)–2T [Removed]

Par. 13a. Section 301.6223(e)–2T is removed.

Par. 14. Section 301.6223(f)–1 is added to read as follows:

§ 301.6223(f)–1 Duplicate copy of final partnership administrative adjustment.

(a) *In general.* Section 6223(f) does not prohibit the Internal Revenue Service from issuing a duplicate copy of the notice of final partnership administrative adjustment (for example, in the event the original notice is lost).

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(f)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(f)–1T [Removed]

Par. 14a. Section 301.6223(f)–1T is removed.

Par. 15. Section 301.6223(g)–1 is added to read as follows:

§ 301.6223(g)–1 Responsibilities of the tax matters partner.

(a) *Notices described in section 6223(a)*—(1) *Notice of beginning of proceeding.* Except as otherwise provided in § 301.6223(a)–2, the tax matters partner shall, within 75 days after the Internal Revenue Service mails the notice specified in section 6223(a)(1), forward a copy of that notice to each partner not entitled to notice from the Internal Revenue Service under section 6223. See § 301.6230(e)–1 for information to be furnished to the Internal Revenue Service.

(2) *Notice of final partnership administrative adjustment.* The tax matters partner shall, within 60 days after the Internal Revenue Service mails the notice specified in section 6223(a)(2), forward a copy of that notice to each partner not entitled to notice from the Internal Revenue Service under section 6223.

(3) *Requirement inapplicable in certain cases.* The tax matters partner is not required to send notice to a partner if—

(i) Before the expiration of the applicable 75-day or 60-day period the partnership items of that partner have become nonpartnership items (for example, by settlement);

(ii) That partner is an indirect partner and has not been identified to the tax matters partner at least 30 days before the tax matters partner is required to send such notice;

(iii) That partner is treated as a partner solely by virtue of § 301.6231(a)(2)–1;

(iv) That partner was a member of a notice group as of the date on which the notice was mailed to the tax matters partner (see § 301.6223(b)–1(c)(4) for the date on which a partner becomes a member of a notice group);

(v) The notice has already been provided to that partner by another person; or

(vi) The notice is withdrawn by the Internal Revenue Service under § 301.6223(a)–2.

(b) *Other notices or information*—(1) *In general.* The tax matters partner shall furnish to the partners specified in paragraph (b)(2) of this section information with respect to the following—

(i) Closing conference with the examining agent;

(ii) Proposed adjustments, rights of appeal, and requirements for filing of a protest;

(iii) Time and place of any Appeals conference;

(iv) Acceptance by the Internal Revenue Service of any settlement offer;

(v) Consent to the extension of the period of limitations with respect to all partners;

(vi) Filing of a request for administrative adjustment (including a request for substituted return treatment under § 301.6227(c)–1) on behalf of the partnership;

(vii) Filing by the tax matters partner or any other partner of any petition for judicial review under sections 6226 or 6228(a);

(viii) Filing of any appeal with respect to any judicial determination provided for in sections 6226 or 6228(a); and

(ix) Final judicial redetermination.

(2) *Partners to be notified.* The tax matters partner shall provide information with respect to any action or other matter specified in paragraph (b)(1) of this section to all notice group representatives and all other partners except partners—

(i) Whose partnership items become nonpartnership items before the expiration of the period specified in paragraph (b)(3) of this section for furnishing that information;

(ii) Who are indirect partners and who are not identified to the tax matters partner at least 30 days before the tax matters partner is required to provide the information;

(iii) Who are treated as partners solely by virtue of § 301.6231(a)(2)–1;

(iv) Who are members of a notice group as of the date on which the tax matters partner takes that action or receives information with respect to that matter (see § 301.6223(b)–1(c)(4) for the date on which a partner becomes a member of a notice group); or

(v) Who have already received information with respect to the action or matter from any other person.

(3) *Time for furnishing information.* The tax matters partner shall furnish information with respect to an action or other matter described in paragraph (b)(1) of this section within 30 days of taking the action or receiving information with respect to that matter.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(g)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(g)–1T [Removed]

Par. 15a. Section 301.6223(g)–1T is removed.

Par. 16. Section 301.6223(h)–1 is added to read as follows:

§ 301.6223(h)–1 Responsibilities of pass-thru partner.

(a) *In general.* The pass-thru partner shall, within 30 days of receiving notice or any other information regarding a partnership proceeding from the Internal Revenue Service, the tax matters partner, or another pass-thru partner, forward a copy of that notice or information to the person or persons holding an interest through the pass-thru partner in the profits or losses of the partnership for the partnership taxable year to which the notice or information relates. In the case of a pass-thru partner that is a partnership within the meaning of section 6231(a)(1), the tax matters partner of such partnership shall forward copies of the notice or information to the partners of such partnership.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(h)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(h)–1T [Removed]

Par. 16a. Section 301.6223(h)–1T is removed.

Par. 17. Section 301.6224(a)–1 is added to read as follows:

§ 301.6224(a)–1 Participation in administrative proceedings.

(a) *In general.* Every partner in the partnership, including an indirect partner, has the right to participate in any phase of administrative proceedings. However, except as provided in section 6223 and the regulations thereunder, neither the Internal Revenue Service nor the tax matters partner is required to provide notice of any proceeding to the partners. Consequently, a partner who wishes, for example, to be present during a preliminary discussion between an examining agent and the tax matters partner should make special arrangements with the tax matters partner to obtain information as to the time and place of the discussion. The Internal Revenue Service and the tax matters partner will determine the time and place for all administrative proceedings. Arrangements will generally not be changed merely for the convenience of another partner.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6224(a)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6224(a)–1T [Removed]

Par. 17a. Section 301.6224(a)–1T is removed.

Par. 18. Section 301.6224(b)–1 is added to read as follows:

§ 301.6224(b)–1 Partner may waive rights.

(a) *In general.* A partner may at any time waive any right that the partner has or any restriction on action by the Internal Revenue Service under subchapter C of chapter 63 of the Internal Revenue Code.

(b) *Form and manner of making waiver.* The waiver described in paragraph (a) of this section shall be made by a written statement. If the Internal Revenue Service furnishes a form to be used for this purpose, the partner may make the waiver by completing the form in accordance with the form's instructions. If such a form is not furnished, the statement shall—

(1) Be clearly identified as a waiver under section 6224(b);

(2) Identify the partner and the partnership by name, address, and taxpayer identification number;

(3) Specify the right or restriction being waived and the taxable year(s) to which the waiver applies;

(4) Be signed by the partner making the waiver; and

(5) Be filed with the service center where the partnership return is filed. However, if the person filing the statement knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement shall be filed with the Internal Revenue Service office that mailed such notice.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6224(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6224(b)-1T [Removed]

Par. 18a. Section 301.6224(b)–1T is removed.

Par. 19. Section 301.6224(c)–1 is added to read as follows:

§ 301.6224(c)–1 Tax matters partner may bind nonnotice partners.

(a) *In general.* In the absence of a showing of fraud, malfeasance, or misrepresentation of fact, if the tax matters partner enters into a settlement agreement with the Internal Revenue Service with respect to partnership items, including partnership-level determinations relating to any penalty, addition to tax, or additional amounts that relate to adjustments to partnership items, and expressly states that the agreement shall be binding on the other partners, then that agreement shall be binding on all partners except those who—

(1) Are, as of the day on which the agreement is entered into, either notice partners or members of a notice group (see § 301.6223(b)–1(c)(4) for the date on which a partner becomes a member of a notice group); or

(2) Have, at least 30 days before the day on which the agreement is entered into, filed with the Internal Revenue Service the statement described in paragraph (c) of this section.

(b) *Indirect partners*—(1) *In general.* If, under paragraph (a) of this section, a pass-thru partner is not bound by an agreement entered into by the tax matters partner, all indirect partners holding an interest in the partnership through that pass-thru partner shall not be bound by that agreement. If, however, the pass-thru partner is bound by an agreement entered into by the tax matters partner, paragraph (a) of this section shall be applied separately to each indirect partner holding an interest in the partnership through the pass-thru partner to determine whether the indirect partner is also bound by the agreement.

(2) *Example.* The following example illustrates the principles of this section:

Example. Partnership P has over 100 partners. Partnership J is a partner in partnership P with a profits interest of less than 1 percent. Partnership J has three partners, A, B, and C. A is a member of a notice group with respect to partnership P, but B and C are not. On July 1, 2002, B filed the statement described in paragraph (c) of this section not to be bound by any settlement agreement entered into by the tax matters partner of partnership P. On August 1, 2002, the tax matters partner of partnership P enters into a settlement agreement with the Internal Revenue Service and states that the agreement is binding on other partners as provided in section 6224(c)(3). Because partnership J is bound by the settlement agreement, paragraph (a) of this section is applied separately to each of the indirect partners to determine whether they are bound. A is not bound by the agreement because A was a member of a notice group on the day the agreement was entered into and B is not bound because B filed the statement not to be bound at least 30 days before the agreement was entered into. C is bound by the settlement agreement.

(c) Statement not to be bound—(1) *Contents of statement.* The statement referred to in paragraph (a)(2) of this section shall—

(i) Be clearly identified as a statement to deny settlement authority to the tax matters partner under section 6224(c)(3)(B);

(ii) Identify the partner and partnership by name, address, and taxpayer identification number;

(iii) Specify the taxable year or years to which the statement applies; and

(iv) Be signed by the partner filing the statement.

(2) *Place where statement is to be filed.* The statement described in paragraph (c)(1) of this section generally shall be filed with the Internal Revenue Service service center where the partnership return is filed. However, if the partner knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement shall be filed with the Internal Revenue Service office that mailed that notice.

(3) *Consolidated statements.* The statement described in paragraph (c)(1) of this section may be filed with respect to more than one partner if the requirements of that paragraph (c)(1) (including signatures) are satisfied with respect to each partner.

(d) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6224(c)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6224(c)–1T [Removed]

Par. 19a. Section 301.6224(c)–1T is removed.

Par. 20. Section 301.6224(c)–2 is added to read as follows:

§ 301.6224(c)–2 Pass-thru partner binds indirect partners.

(a) *Pass-thru partner binds unidentified indirect partners*—(1) *In general.* If a pass-thru partner enters into a settlement agreement with the Internal Revenue Service with respect to partnership items, that agreement binds all indirect partners holding an interest in that partnership through the pass-thru partner except those indirect partners who have been identified as provided in section 6223(c)(3) and § 301.6223(c)–1 at least 30 days before the date on which the agreement is entered into. A settlement with respect to partnership items includes partnership-level determinations relating to any penalty, addition to tax, and additional amounts that relate to adjustments to partnership items. However, if, in addition to the interest in the partnership held through the pass-thru partner entering into a settlement agreement, an indirect partner holds a separate interest in that partnership, either directly or indirectly through a different pass-thru partner, then the indirect partner shall not be bound by that settlement agreement with respect to the interests held directly or indirectly through a pass-thru partner other than the pass-thru partner entering into the settlement agreement.

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example:

Example. Partnership J is a partner in partnership P. C is a partner in J but has not been identified as provided in section 6223(c)(3) and § 301.6223(c)–1. The only interest that C holds in P is through J. The tax matters partner of J enters into a settlement agreement with the Internal Revenue Service with respect to partnership items arising from P. C is bound by the settlement agreement entered into by the tax matters partner of J.

(b) *Person in pass-thru partner authorized to enter into settlement agreement that binds indirect partners.* In the case of a pass-thru partner that is—

(1) A partnership within the meaning of section 6231(a)(1), the tax matters partner of that partnership;

(2) A partnership other than a partnership described in paragraph (b)(1) of this section, any general partner of that partnership;

(3) An S corporation, any officer of that S corporation; or

(4) A trust, estate, or nominee, any person authorized in writing to act on behalf of that trust, estate, or nominee, may enter into a settlement agreement with the Internal Revenue Service on behalf of its respective entity that would bind the unidentified indirect partners that hold a partnership interest through the pass-thru partner.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6224(c)–2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6224(c)–2T [Removed]

Par. 20a. Section 301.6224(c)–2T is removed.

Par. 21. Section 301.6224(c)–3 is added to read as follows:

§ 301.6224(c)–3 Consistent settlements.

(a) *In general.* If the Internal Revenue Service enters into a settlement agreement with any partner with respect to partnership items, whether comprehensive or partial, the Internal Revenue Service shall offer to any other partner who so requests in accordance with paragraph (c) of this section, settlement terms consistent with those contained in the settlement agreement entered into.

(b) *Requirements for consistent settlement terms*—(1) *In general.* Consistent settlement terms are those based on the same determinations with respect to partnership items. However,

consistent settlement terms also may include partnership-level determinations of any penalty, addition to tax, or additional amount that relates to partnership items. Settlements with respect to partnership items shall be self-contained; thus, a concession by one party with respect to a partnership item may not be based upon a concession by another party with respect to any item that is not a partnership item other than a partnership-level determination of any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. Consistent agreements must be identical to the original settlement (that is, the settlement upon which the offered settlement terms are based). A consistent agreement must mirror the original settlement and may not be limited to selected items from the original settlement. Once a partner has settled a partnership item, or a partnership-level determination of any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, that partner may not subsequently request settlement terms consistent with a settlement that contains the previously settled item. The requirement for consistent settlement terms applies only if—

(i) The items were partnership items (or a partnership-level determination of any related penalty, addition to tax, or additional amount) for the partner entering into the original settlement immediately before the original settlement; and

(ii) The items are partnership items (or a partnership-level determination of any related penalty, addition to tax, or additional amount) for the partner requesting the consistent settlement at the time the partner files the request.

(2) *Effect of consistent agreement.* Consistent settlement terms are reflected in a consistent agreement. A consistent agreement is not a settlement agreement that gives rise to further consistent settlement rights because it is required to be given without volitional agreement of the Secretary. Therefore, a consistent agreement required to be offered to a requesting taxpayer is not a settlement agreement under section 6224(c)(2) or paragraph (c)(3) of this section which starts a new period for requesting consistent settlement terms. For all other purposes of the Internal Revenue Code, however, (e.g., binding effect under section 6224(c)(1) and conversion to nonpartnership items under section 6231(b)(1)(C)), a consistent agreement is treated as a settlement agreement.

(c) *Time and manner of requesting consistent settlements*—(1) *In general.* A partner desiring settlement terms consistent with the terms of any settlement agreement entered into between any other partner and the Internal Revenue Service shall submit a written statement to the Internal Revenue Service office that entered into the settlement.

(2) *Contents of statement.* Except as otherwise provided in instructions to the taxpayer from the Internal Revenue Service, the written statement described in paragraph (c)(1) of this section shall—

(i) Identify the statement as a request for consistent settlement terms under section 6224(c)(2);

(ii) Contain the name, address, and taxpayer identification number of the partnership and of the partner requesting the settlement offer (and, in the case of an indirect partner, of the pass-thru partner through which the indirect partner holds an interest);

(iii) Identify the earlier agreement to which the request refers; and

(iv) Be signed by the partner making the request.

(3) *Time for filing request.* The statement shall be filed not later than the later of—

(i) The 150th day after the day on which the notice of final partnership administrative adjustment is mailed to the tax matters partner; or

(ii) The 60th day after the day on which the settlement agreement was entered into.

(d) *Examples.* The following examples illustrate the principles of this section:

Example 1. The Internal Revenue Service seeks to disallow a $100,000 loss reported by Partnership P $20,000 of which was allocated to partner X, and $10,000 of which was allocated to partner Y. The Internal Revenue Service agrees to a settlement with X in which the Internal Revenue Service allows $12,000 of the loss, accepts the treatment of all other partnership items on the partnership return, and imposes a penalty for negligence related to the $8,000 loss disallowance. Partner Y requests settlement terms consistent with the settlement made between X and the Internal Revenue Service. The items are partnership items (or a related penalty) for X immediately before X enters into the settlement agreement and are partnership items (or a related penalty) for Y at the time of the request. The Internal Revenue Service must offer Y settlement terms allowing a $6,000 loss, a negligence penalty on the $4,000 disallowance, and otherwise reflecting the treatment of partnership items on the partnership return.

Example 2. F files inconsistently with Partnership P and reports the inconsistency. The Internal Revenue Service notifies F that it will treat all partnership items arising from P as nonpartnership items with respect to F. Later, the Internal Revenue Service enters into a settlement with F on these items. The Internal Revenue Service is not required to offer the other partners of P settlement terms consistent with the settlement reached between F and the Internal Revenue Service because the items arising from P are not partnership items with respect to F.

Example 3. G, a partner in Partnership P, filed suit under section 6228(b) after the Internal Revenue Service failed to allow an administrative adjustment request with respect to a partnership item arising from P for a taxable year. Under section 6231(b)(1)(B), the partnership items of G for the partnership taxable year became nonpartnership items as of the date G filed suit. After G filed suit, another partner and the Internal Revenue Service entered into a settlement agreement with respect to items arising from P in that year. G is not entitled to consistent settlement terms because, at the time of the settlement, the items arising from P are no longer partnership items with respect to G.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6224(c)–3T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6224(c)–3T [Removed]

Par. 21a. Section 301.6224(c)–3T is removed.

Par. 22. Section 301.6226(a)–1 is added to read as follows:

§ 301.6226(a)–1 Principal place of business of partnership.

(a) *In general.* The principal place of a partnership's business for purposes of determining the appropriate district court in which a petition for a readjustment of partnership items may be filed is its principal place of business as of the date the petition is filed.

(b) *Example.* The provisions of paragraph (a) of this section may be illustrated by the following example:

Example. The principal place of Partnership A's business on the day that the notice of the final partnership administrative adjustment was mailed to A's tax matters partner was Cincinnati, Ohio. However, by the day on which a petition seeking judicial review of that adjustment was filed, A had moved its principal place of business to Louisville, Kentucky. For purposes of section 6226(a)(2), A's principal place of business is Louisville.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6226(a)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6226(a)–1T [Removed]

Par. 22a. Section 301.6226(a)–1T is removed.

Par. 23. Section 301.6226(b)–1 is added to read as follows:

§ 301.6226(b)–1 5-percent group.

(a) *In general.* All members of a 5-percent group shall join in filing any petition for judicial review. The designation of a partner as a representative of a notice group does not authorize that partner to file a petition for a readjustment of partnership items on behalf of the notice group.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6226(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6226(b)–1T [Removed]

Par. 23a. Section 301.6226(b)–1T is removed.

Par. 24. Section 301.6226(e)–1 is added to read as follows:

§ 301.6226(e)–1 Jurisdictional requirement for bringing an action in District Court or United States Court of Federal Claims.

(a) *Amount to be deposited*—(1) *In general.* The jurisdictional amount that the filing partner (or, in the case of a petition filed by a 5-percent group, each member of the group, or, for civil actions beginning on or after April 2, 2002, in the case of a petition filed by a pass-thru partner, each indirect partner holding an interest through the pass-thru partner) shall deposit is the amount by which the tax liability of the partner would be increased if the treatment of the partnership items on the partner's return were made consistent with the treatment of partnership items on the partnership return, as adjusted by the notice of final partnership administrative adjustment. The partner is not required to pay other outstanding liabilities in order to deposit a jurisdictional amount.

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example:

Example. A files a petition for readjustment of partnership items in the United States Court of Federal Claims. A's tax liability would be increased by $4,000 if partnership items on A's return were conformed to the partnership return, as adjusted by the notice of final partnership administrative adjustment. A has an unpaid liability of $10,000 attributable to nonpartnership items. A is required to deposit $4,000 in order to satisfy the jurisdictional requirement.

(b) *Deposit taken into account in computing interest.* The amount deposited is treated as a payment of tax for purposes of chapter 67 of the Internal Revenue Code (relating to interest).

(c) *Deposit generally not treated as payment of tax.* Except as provided in paragraph (b) of this section, an amount deposited under section 6226(e) shall not be treated as a payment of tax. Thus, the Internal Revenue Service may proceed against the depositor for a deficiency based on nonpartnership items without regard to this deposit.

(d) *Amount deposited may be applied against assessment.* If the restriction on assessment provided under section 6225(a) lapses with respect to a deficiency attributable to partnership items for a partnership taxable year while an amount is on deposit under section 6226(e) in connection with a petition relating to those items, the Internal Revenue Service may apply the amount deposited against any such deficiency that is assessed.

(e) *Effective date.* Except as otherwise provided in paragraph (a)(1) of this section, this section is applicable to civil actions beginning on or after October 4, 2001. For civil actions beginning prior to October 4, 2001, see § 301.6226(e)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6226(e)–1T [Removed]

Par. 24a. Section 301.6226(e)–1T is removed.

Par. 25. Section 301.6226(f)–1 is added to read as follows:

§ 301.6226(f)–1 Scope of judicial review.

(a) *In general.* A court reviewing a notice of final partnership administrative adjustment has jurisdiction to determine all partnership items for the taxable year to which the notice relates and the proper allocation of such items among the partners. Thus, the review is not limited to the items adjusted in the notice. In addition, the court has jurisdiction in the partnership-level proceeding to determine any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. However, the court does not have jurisdiction in the partnership-level proceeding to consider any partner-level defenses to any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. See section 6230(c)(4) and § 301.6221–1(c) and (d).

(b) *Example.* The provisions of paragraph (a) of this section may be illustrated by the following example:

Example. The Internal Revenue Service issues a notice of final partnership administrative adjustment with respect to Partnership ABC in which the only item adjusted is depreciation. A petition for judicial review of that notice is filed. During the judicial proceeding, a partner of ABC, in accordance with the applicable court rules, raises an issue relating to the treatment of intangible drilling costs. The court reviewing the notice has jurisdiction to determine the intangible drilling cost issue in addition to the depreciation issue.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6226(f)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6226(f)–1T [Removed]

Par. 25a. Section 301.6226(f)–1T is removed.

§ 301.6227(b)–1T [Removed]

Par. 26. Section 301.6227(b)–1T is removed.

Par. 26a. Section 301.6227(c)–1 is added to read as follows:

§ 301.6227(c)–1 Administrative adjustment request by the tax matters partner on behalf of the partnership.

(a) *In general.* A request for an administrative adjustment filed by the tax matters partner on behalf of the partnership shall be filed on the form prescribed by the Internal Revenue Service for that purpose in accordance with that form's instructions. Except as otherwise provided in that form's instructions, the request shall be—

(1) Filed with the service center where the original partnership return was filed (but, if the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed such notice);

(2) Signed by the tax matters partner; and

(3) Accompanied by revised schedules showing the effects of the proposed changes on each partner and an explanation of the changes.

(b) *Denied request for treatment as a substituted return remains administrative adjustment request.* An administrative adjustment request filed by the tax matters partner on behalf of the partnership for which substituted return treatment is requested but not granted remains an administrative adjustment request. Thus, for example, the tax matters partner may file suit under section 6228(a) if the Internal Revenue Service fails to take timely action on the request.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6227(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6227(c)–1T [Removed]

Par. 27. Section 301.6227(c)–1T is removed.

Par. 27a. Section 301.6227(d)–1 is added to read as follows:

§ 301.6227(d)–1 Administrative adjustment request filed on behalf of a partner.

(a) *In general.* A request for an administrative adjustment on behalf of a partner shall be filed on the form prescribed by the Internal Revenue Service for that purpose in accordance with that form's instructions. Except as otherwise provided in that form's instructions, the request shall—

(1) Be filed in duplicate, the original copy filed with the partner's amended income tax return (on which the partner computes the amount by which the partner's tax liability should be adjusted if the request is granted) and the other copy filed with the service center where the partnership return is filed (but, if the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed such notice);

(2) Identify the partner and the partnership by name, address, and taxpayer identification number;

(3) Specify the partnership taxable year to which the administrative adjustment request applies;

(4) Relate only to partnership items; and

(5) Relate only to one partnership and one partnership taxable year.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6227(c)–1T contained in 26 CFR part 1, revised April 1, 2001.

Par. 28. Section 301.6229(b)–1 is added to read as follows:

§ 301.6229(b)–1 Extension by agreement.

(a) *In general.* Any partnership may authorize any person to extend the period described in section 6229(a) with respect to all partners by filing a statement to that effect with the service center where the partnership return is filed (but, if the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed such notice). The statement shall—

(1) Provide that it is an authorization for a person other than the tax matters partner to extend the assessment period with respect to all partners;

(2) Identify the partnership and the person being authorized by name, address, and taxpayer identification number;

(3) Specify the partnership taxable year or years for which the authorization is effective; and

(4) Be signed by all persons who were general partners (or, in the case of an LLC, member-managers, as those terms are defined in § 301.6231(a)(7)–2(b)) at any time during the year or years for which the authorization is effective.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6229(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6229(b)–1T [Removed]

Par. 28a. Section 301.6229(b)–1T is removed.

Par. 29. Section 301.6229(b)–2 is added to read as follows:

§ 301.6229(b)–2 Special rule with respect to debtors in Title 11 cases.

(a) *In general.* Notwithstanding any other law or rule of law, if an agreement is entered into under section 6229(b)(1)(B), and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under Title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Internal Revenue Service has been notified of the bankruptcy proceeding in accordance with paragraph (b) of this section.

(b) *Procedures for notifying the Internal Revenue Service of a partner's bankruptcy proceeding.* (1) The Internal Revenue Service shall be notified of the bankruptcy proceeding of the tax matters partner in accordance with the procedures set forth in § 301.6223(c)–1.

(2) In addition to the information specified in § 301.6223(c)–1, notification that a person is (or was) a debtor in a bankruptcy proceeding shall include the date the bankruptcy proceeding was filed, the name and address of the court in which the bankruptcy proceeding exists (or took place), the caption of the bankruptcy proceeding (including the docket number or other identification number used by the court), and the status of the proceeding as of the date of notification.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6229(b)–2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6229(b)–2T [Removed]

Par. 29a. Section 301.6229(b)–2T is removed.

Par. 30. Section 301.6229(e)–1 is added to read as follows:

§ 301.6229(e)–1 Information with respect to unidentified partner.

(a) *In general.* A partner who is not properly identified on the partnership return (including an indirect partner) remains an unidentified partner for purposes of section 6229(e) until identifying information is furnished as provided in § 301.6223(c)–1.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6229(e)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6229(e)–1T [Removed]

Par. 30a. Section 301.6229(e)–1T is removed.

Par. 31. Section 301.6229(f)–1 is added to read as follows:

§ 301.6229(f)–1 Special rule for partial settlement agreements.

(a) *In general.* If a partner enters into a settlement agreement with the Internal Revenue Service with respect to the treatment of some of the partnership items or partnership-level determinations of any penalty, addition to tax, or additional amount in dispute for a partnership taxable year, but one or more other partnership items or determinations remain in dispute, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into.

(b) *Other items remaining in dispute.* Pursuant to section 6226(c), a partner is a party to a partnership-level judicial proceeding with respect to partnership items and partnership-level determinations of penalties, additions to tax or additional amounts. When a partner settles partnership items, the settled partnership items convert to nonpartnership items under section 6231(b)(1)(C) and will not be subject to any future or pending partnership-level proceeding pursuant to section 6226(d)(1). The remaining unsettled partnership items, as well as any unsettled penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item (regardless of whether the partnership item to which it relates has been settled), however, will remain subject to determination under partnership-level administrative and judicial procedures. Consequently, any remaining unsettled items, including any unsettled penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, will be deemed to

remain in dispute. Thus, the period for assessing any tax attributable to the settled items will be governed by the period for assessing any tax attributable to the remaining unsettled items.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6229(f)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6229(f)–1T [Removed]

Par. 31a. Section 301.6229(f)–1T is removed.

Par. 32. Section 301.6230(b)–1 is added to read as follows:

§ 301.6230(b)–1 Request that correction not be made.

(a) *In general.* The request that a correction not be made under section 6230(b)(2) shall be in writing and shall—

(1) State that it is a request that a correction not be made under section 6230(b);

(2) Identify the partnership and the partner filing the request by name, address, and taxpayer identification number;

(3) Be signed by the partner filing the request; and

(4) Be filed with the Internal Revenue Service office that provided the notice of the correction of the error.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6230(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6230(b)–1T [Removed]

Par. 32a. Section 301.6230(b)–1T is removed.

Par. 33. Section 301.6230(c)–1 is added to read as follows:

§ 301.6230(c)–1 Claim arising out of erroneous computation, etc.

(a) *In general.* A claim for refund under section 6230(c) shall state the grounds for the claim and shall be filed with the service center where the partner's return is filed.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6230(c)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6230(c)–1T [Removed]

Par. 33a. Section 301.6230(c)–1T is removed.

Par. 34. Section 301.6230(e)–1 is added to read as follows:

§ 301.6230(e)–1 Tax matters partner required to furnish names.

(a) *In general.* If a notice of the beginning of an administrative proceeding is mailed to the tax matters partner with respect to any partnership taxable year, the tax matters partner shall furnish to the Internal Revenue Service office that issued the notice the name, address, profits interest, and taxpayer identification number of each person who was a partner in the partnership at any time during that taxable year if that information was not provided on the partnership return filed for that year.

(b) *Revised or additional information.* If the tax matters partner discovers that any information furnished to the Internal Revenue Service on the partnership return or under paragraph (a) of this section was incorrect or incomplete, the tax matters partner shall furnish revised or additional information to the Internal Revenue Service within 15 days of discovering that the information furnished to the Internal Revenue Service was incorrect or incomplete.

(c) *Information required with respect to indirect partners.* The requirements of this section for identifying information apply with respect to indirect partners to the extent that the tax matters partner has such information.

(d) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6230(e)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6230(e)–1T [Removed]

Par. 34a. Section 301.6230(e)–1T is removed.

Par. 35. Section 301.6231(a)(1)–1 is added to read as follows:

§ 301.6231(a)(1)–1 Exception for small partnerships.

(a) *In general.* For purposes of the exception for small partnerships under section 6231(a)(1)(B), the rules contained in this section shall apply.

(1) *10 or fewer.* The 10 or fewer limitation described in section 6231(a)(1)(B)(i) is applied to the number of natural persons, C corporations, and estates of deceased partners that were partners at any one time during the partnership taxable year. Thus, for example, a partnership that at no time during the taxable year had more than 10 partners may be treated as a small partnership even if, because of transfers of interests in the partnership, 11 or more natural persons, C corporations, or estates of deceased partners owned interests in the partnership for some portion of the taxable year. See section 1361(a)(2) for the definition of a *C corporation.* For purposes of section 6231(a)(1)(B) and this section, a husband and wife (and their estates) are treated as one person.

(2) *Pass-thru partner.* The exception provided in section 6231(a)(1)(B) does not apply to a partnership for a taxable year if any partner in the partnership during that taxable year is a pass-thru partner as defined in section 6231(a)(9). For purposes of this paragraph (a)(2), an estate shall not be treated as a pass-thru partner.

(3) *Determination made annually.* The determination of whether a partnership meets the requirements for the exception for small partnerships under section 6231(a)(1)(B) and this paragraph (a) shall be made with respect to each partnership taxable year. Thus, a partnership that does not qualify as a small partnership in one taxable year may qualify as a small partnership in another taxable year if the requirements for the exception under section 6231(a)(1)(B) and this paragraph (a) are met with respect to that other taxable year.

(b) *Election to have subchapter C of chapter 63 apply*—(1) *In general.* Any partnership that meets the requirements set forth in section 6231(a)(1)(B) and paragraph (a) of this section (relating to the exception for small partnerships) may elect under paragraph (b)(2) of this section to have the provisions of subchapter C of chapter 63 of the Internal Revenue Code apply with respect to that partnership.

(2) *Method of election.* A partnership shall make the election described in paragraph (b)(1) of this section by attaching a statement to the partnership return for the first taxable year for which the election is to be effective. The statement shall be identified as an election under section 6231(a)(1)(B)(ii), shall be signed by all persons who were partners of that partnership at any time during the partnership taxable year to which the return relates, and shall be filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing the partnership return. However, for any partnership taxable year for which the due date of the return (determined without regard to extensions) is before January 2, 2002, the partnership may file the statement described in the preceding sentence on or before the date which is one year before the date specified in section 6229(a) for the expiration of the period of limitations with respect to that partnership (determined with regard to extensions of that period under section 6229(b)).

(3) *Years covered by election.* The election shall be effective for the partnership taxable year to which the return relates and all subsequent partnership taxable years unless revoked with the consent of the Commissioner.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(1)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(a)(1)–1T [Removed]

Par. 35a. Section 301.6231(a)(1)–1T is removed.

Par. 36. Section 301.6231(a)(2)–1 is added to read as follows:

§ 301.6231(a)(2)–1 Persons whose tax liability is determined indirectly by partnership items.

(a) *Spouse filing joint return with individual holding a separate interest*—(1) *In general.* Except as otherwise provided in this paragraph (a), a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as a partner for purposes of subchapter C of chapter 63 of the Internal Revenue Code. Thus, the spouse who files a joint return with a partner will be permitted to participate in administrative and judicial proceedings.

(2) *Counting rules.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall not be counted as a partner for purposes of applying section 6223(b) (relating to special rules for partnerships with more than 100 partners) and section 6231(a)(1)(B) (relating to the exception for small partnerships).

(3) *Notice rules*—(i) *In general.* Except as provided in paragraph (a)(3)(ii) of this section, for purposes of subchapter C of chapter 63 of the Internal Revenue Code, a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as receiving any notice received by the individual holding the separate interest.

(ii) *Spouse identified on partnership return or by statement.* Paragraph (a)(3)(i) of this section shall not apply to a spouse who files a joint return with an individual holding a separate interest in the partnership if that spouse—

(A) Is identified on the partnership return; or

(B) Is identified as a partner entitled to notice as provided in § 301.6223(c)–1(b).

(4) *Conversion of partnership items*—(i) *Individual holding a separate interest.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall cease to be treated as a partner in the partnership under paragraph (a)(1) of this section upon the conversion of the partnership items of the individual holding the separate interest in the partnership to nonpartnership items pursuant to section 6231(b). If each spouse holds a separate interest in the partnership, the previous sentence shall be applied separately with respect to each partnership interest.

(ii) *Spouse who files a joint return with an individual holding a separate interest in the partnership.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall cease to be treated as a partner in the partnership under paragraph (a)(1) of this section upon the occurrence of an event that would convert the partnership items of the spouse to nonpartnership items if the spouse were the owner of a separate interest.

(iii) *Examples.* The following examples illustrate the application of paragraph (a)(4) of this section:

Example 1. Husband owns a separate interest in ABC partnership and files a joint return with Wife. Husband files for bankruptcy. Pursuant to § 301.6231(c)–7, upon filing for bankruptcy, the partnership items of the debtor convert to nonpartnership items. Thus, Husband's partnership items converted to nonpartnership items upon the filing of Husband's bankruptcy petition. Pursuant to paragraph (a)(4)(i) of this section, Wife is no longer treated as a partner of ABC partnership as of the date the partnership items of Husband converted to nonpartnership items.

Example 2. Wife owns a separate interest in XYZ partnership and files a joint return with Husband. Husband files for bankruptcy. Because the filing of the bankruptcy petition by Husband is an event that would convert Husband's partnership items to nonpartnership items if Husband were the owner of a separate interest, Husband shall no longer be treated as a partner as of the filing of the bankruptcy petition. Pursuant to paragraph (a)(4)(ii) of this section, the partnership items of Wife are not affected by Husband's bankruptcy.

(5) *Cross-reference.* See § 301.6231(a)(12)–1 for special rules relating to spouses holding a joint interest in a partnership.

(b) *Shareholder of C corporation.* A shareholder of a C corporation (as defined in section 1361(a)(2)) is not a partner in a partnership merely because the C corporation is a partner in that partnership.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(2)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(a)(2)–1T [Removed]

Par. 36a. Section 301.6231(a)(2)–1T is removed.

Par. 37. Section 301.6231(a)(5)–1 is added to read as follows:

§ 301.6231(a)(5)–1 Definition of affected item.

(a) *In general.* The term *affected item* means any item to the extent such item is affected by a partnership item. It includes items unrelated to the items reflected on the partnership return (for example, an item, such as the threshold for the medical expense deduction under section 213, that varies if there is a change in an individual partner's adjusted gross income).

(b) *Basis in a partner's partnership interest.* The basis of a partner's partnership interest is an affected item to the extent it is not a partnership item.

(c) *At-risk limitation.* The application of the at-risk limitation under section 465 to a partner with respect to a loss incurred by a partnership is an affected item to the extent it is not a partnership item.

(d) *Passive losses.* The application of the passive loss rules under section 469 to a partner with respect to a loss incurred by a partnership is an affected item to the extent it is not a partnership item.

(e) *Penalty, addition to tax, or additional amount*—(1) *In general.* The term *affected item* includes any penalty, addition to tax, or additional amount provided by subchapter A of chapter 68 of the Internal Revenue Code of 1986 to the extent provided in this paragraph (e).

(2) *Penalty, addition to tax, or additional amount without floor.* If a penalty, addition to tax, or additional amount that does not contain a floor (that is, a threshold amount of underpayment or understatement necessary before the imposition of the penalty, addition to tax, or additional amount) is imposed on a partner as the result of an adjustment to a partnership item, the term *affected item* shall include the penalty, addition to tax, or additional amount computed with reference to the portion of the underpayment that is attributable to the partnership item adjustment(s) to which the penalty, addition to tax, or additional amount applies.

(3) *Penalty, addition to tax, or additional amount containing floor*—(i) *Floor exceeded prior to adjustment.* If a partner would have been subject to a penalty, addition to tax, or additional amount that contains a floor in the

absence of an adjustment to a partnership item (that is, the partner's understatement or underpayment exceeded the floor even without an adjustment to a partnership item) the term *affected item* shall include only the portion of the penalty, addition to tax, or additional amount computed with reference to the partnership item (or affected item) adjustments.

(ii) *Floor not exceeded prior to adjustment.* In the case of a penalty, addition to tax, or additional amount that contains a floor, if the taxpayer's understatement or underpayment does not exceed the floor prior to an adjustment to a partnership item but does so after such adjustment, the term *affected item* shall include the penalty, addition to tax, or additional amount computed with reference to the entire underpayment or understatement to which the penalty, addition to tax, or additional amount applies.

(4) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example 1. A, a partner of P, had an aggregate underpayment of $1,000 of which $100 is attributable to an adjustment to partnership items. A is negligent in reporting the partnership items. The accuracy-related penalty under section 6662 for negligence computed with reference to the $100 underpayment attributable to the partnership item adjustments is an affected item.

Example 2. B, a partner of P, understated B's income tax liability attributable to nonpartnership items by $6,000. An adjustment to a partnership item resulting from a partnership proceeding increased B's income tax by an additional $2,000. Prior to the adjustment, B would have been subject to the accuracy-related penalty under section 6662 for a substantial understatement of income tax with respect to the $6,000 understatement attributable to nonpartnership items. The portion of the accuracy-related penalty under section 6662 computed with reference to the $2,000 understatement attributable to partnership items to which the accuracy-related penalty applies is an affected item. The portion of the accuracy-related penalty under section 6662 computed with reference to the $6,000 pre-existing understatement is not an affected item.

Example 3. C, a partner in partnership P, understated C's income tax liability attributable to nonpartnership items by $4,000. As a result of an adjustment to partnership items, that understatement is increased to $10,000. Prior to the adjustment, C would not have been subject to the accuracy-related penalty under section 6662 for a substantial understatement of income tax. The accuracy-related penalty under section 6662 computed with reference to the entire $10,000 understatement to which the accuracy-related penalty applies is an affected item.

(f) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(5)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(a)(5)–1T [Removed]

Par. 37a. Section 301.6231(a)(5)–1T is removed.

Par. 38. Section 301.6231(a)(6)–1 is added to read as follows:

§ 301.6231(a)(6)–1 Computational adjustments.

(a) *Changes in a partner's tax liability*—(1) *In general.* A change in the tax liability of a partner to properly reflect the treatment of a partnership item under subchapter C of chapter 63 of the Internal Revenue Code is made through a computational adjustment. A computational adjustment includes a change in tax liability that reflects a change in an affected item where that change is necessary to properly reflect the treatment of a partnership item, or any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. However, if a change in a partner's tax liability cannot be made without making one or more partner-level determinations, that portion of the change in tax liability attributable to the partner-level determinations shall be made under the deficiency procedures (as described in subchapter B of chapter 63 of the Internal Revenue Code), except for any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item.

(2) *Affected items that do not require partner-level determinations.* Changes in a partner's tax liability with respect to affected items that do not require partner-level determinations (such as the threshold amount of medical deductions under section 213 that changes as the result of determinations made at the partnership level) are computational adjustments that are directly assessed. When making computational adjustments, the Internal Revenue Service may assume that amounts the partner reported on the partner's individual return include all amounts reported to the partner by the partnership (on the Schedule K–1s attached to the partnership's original return), absent contrary notice to the Internal Revenue Service (for example, a ''Notice of Inconsistent Treatment'' pursuant to § 301.6222(a)–2(c)). Such an assumption by the Internal Revenue Service does not constitute a partner-level determination. Moreover, substituting redetermined partnership items for the partner's previously reported partnership items (including partnership items included in carryover amounts) does not constitute a partner-level determination where the Internal Revenue Service otherwise accepts, for the sole purpose of determining the computational adjustment, all nonpartnership items (including, for example, nonpartnership item components of carryover amounts) as reported.

(3) *Affected items that require partner-level determinations.* Changes in a partner's tax liability with respect to affected items that require partner-level determinations (such as a partner's at-risk amount to the extent it depends upon the source from which the partner obtained the funds that the partner contributed to the partnership) are computational adjustments that are subject to the deficiency procedures. Notwithstanding the preceding sentence, any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item is not subject to the deficiency procedures, but rather may be directly assessed as part of the computational adjustment that is made following the partnership proceeding, based on determinations in that proceeding, regardless of whether any partner-level determinations may be required.

(b) *Interest.* A computational adjustment includes any interest due with respect to any underpayment or overpayment of tax attributable to adjustments to reflect properly the treatment of partnership items.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(6)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(a)(6)–1T [Removed]

Par. 38a. Section 301.6231(a)(6)–1T is removed.

Par. 39. Section 301.6231(a)(7)–1 is amended by revising paragraphs (p)(2), (r)(1), and (s) to read as follows:

§ 301.6231(a)(7)–1 Designation or selection of tax matters partner.

* * * * *

(p) * * *

(2) *When each general partner is deemed to have no profits interest in the partnership.* If it is impracticable under paragraph (o)(2) of this section to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will select a partner (including a general or limited partner) as the tax matters partner in accordance with the criteria set forth in paragraph (q) of this section. The Commissioner will notify, within 30 days of the selection, the partner selected, the

partnership, and all partners required to receive notice under section 6223(a) of the selection of the tax matters partner, effective as of the date specified in the notice.

* * * * *

(r) * * * (1) *In general*. If the Commissioner selects a tax matters partner under the provisions of paragraph (p)(1) or (p)(3)(i) of this section, the Commissioner will notify, within 30 days of the selection, the partner selected, the partnership, and all partners required to receive notice under section 6223(a) of the selection of the tax matters partner, effective as of the date specified in the notice.

* * * * *

(s) *Effective date*. This section applies to all designations, selections, and terminations of a tax matters partner occurring on or after December 23, 1996, except for paragraphs (p)(2) and (r)(1), that are applicable on or after October 4, 2001.

§ 301.6231(a)(7)–1T [Removed]

Par. 39a. Section 301.6231(a)(7)–1T is removed.

Par. 40. Section 301.6231(a)(12)–1 is added to read as follows:

§ 301.6231(a)(12)–1 Special rules relating to spouses.

(a) *Spouses holding a joint interest*—(1) *In general*. Except as otherwise provided in this section, spouses holding a joint interest in a partnership shall be treated as separate partners for purposes of subchapter C of chapter 63 of the Internal Revenue Code. Thus, both spouses may participate in administrative and judicial proceedings. The term *joint interest* includes tenancies in common, joint tenancies, tenancies by the entirety, and community property.

(2) *Identification of joint interest*. For purposes of this section, an interest shall be treated as a joint interest in a partnership only if both spouses are identified on the partnership return or are identified as partners entitled to notice as provided in § 301.6223(c)–1(b).

(3) *Failure to identify both spouses as partners*. If both spouses are not identified as set forth in paragraph (a)(2) of this section, then the partnership interest shall be treated as separately owned by the identified spouse.

(4) *Example*. The following example illustrates the application of paragraph (a)(3) of this section:

Example. Wife owns an interest in ABC Partnership and is identified on the Schedule K–1 of the partnership return. Wife and Husband live in a community property state. The partnership return of ABC partnership does not identify Husband, and Husband is not identified as a partner entitled to notice as provided in § 301.6223(c)–1(b). Pursuant to paragraph (a)(3) of this section, the partnership interest of Wife shall be treated as separately owned by Wife.

(b) *Notice and counting rules*—(1) *In general*. Except as provided in paragraph (b)(2) of this section, for purposes of applying section 6223 (relating to notice to partners of proceedings) and section 6231(a)(1)(B) (relating to the exception for small partnerships), spouses holding a joint interest in a partnership shall be treated as one partner. Except as provided in paragraph (b)(2) of this section, the Internal Revenue Service or the tax matters partner may send any required notice to either spouse.

(2) *Identified spouse entitled to notice*. For purposes of applying section 6223 (relating to notice to partners of proceeding) for a partnership taxable year, an individual who holds a joint interest in a partnership with a spouse who is entitled to notice under section 6223 shall be entitled to receive separate notice under section 6223 if such individual—

(i) Is identified as a partner on the partnership return for that taxable year; or

(ii) Is identified as a partner entitled to notice as provided in § 301.6223(c)–1(b).

(c) *Conversion of partnership items*—(1) *In general*. If spouses holding a joint interest in a partnership are treated as separate partners under this section, then section 6231(b) (relating to the conversion of partnership items) shall be applied separately to each spouse.

(2) *Example*. The following example illustrates the application of paragraph (c) of this section:

Example. Husband and Wife own a joint interest in XYZ Partnership. The partnership return identifies both spouses on the Schedule K–1. Under this section, each spouse is treated as a separate partner. If Wife enters into a settlement agreement, Wife's partnership items convert to nonpartnership items pursuant to section 6231(b)(1)(C). Accordingly, Wife no longer has the right to participate in the partnership proceeding subsequent to entering into the settlement agreement. Pursuant to paragraph (c) of this section, however, the partnership items of Husband are not affected by the conversion of the partnership items of Wife, and Husband continues to have the right to participate in the partnership proceeding. This result is the same regardless of whether the partnership items are reported on a joint return or on separate returns.

(d) *Cross-reference*. See § 301.6231(a)(2)–1(a) for special rules relating to spouses who file joint returns with individuals holding a separate interest in a partnership.

(e) *Effective date*. This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(12)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(a)(12)–1T [Removed]

Par. 40a. Section 301.6231(a)(12)–1T is removed.

Par. 41. Section 301.6231(c)–1 is added to read as follows:

§ 301.6231(c)–1 Special rules for certain applications for tentative carryback and refund adjustments based on partnership losses, deductions, or credits.

(a) *Application subject to this section*. This section applies in the case of an application under section 6411 (relating to tentative carryback and refund adjustments) based on losses, deductions, or credits of a partnership if the Commissioner, or the Commissioner's delegate, determines, after review of the available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

(1) A gross valuation overstatement; or

(2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). This section applies only with respect to an application based upon the original reporting on the partner's income tax return of partnership losses, deductions, or credits. Thus, this section does not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment).

(b) *Determination of special enforcement area*. In the case of an application under section 6411 described in paragraph (a) of this section, precluding an assessment under section 6225 that would be permitted under section 6213(b)(3) (relating to assessments arising out of tentative carryback or refund adjustments) with respect to any amount applied, credited, or refunded as a result of the application may encourage the proliferation of abusive tax shelter partnerships and make the eventual collection of taxes due more difficult. Consequently, the Secretary hereby determines that such applications present special enforcement considerations within the meaning of section 6231(c)(1)(E).

(c) *Assessment permitted under section 6213(b)(3)*. Notwithstanding section 6225 (relating to restrictions on assessment with respect to partnership items), an assessment that would be permitted under section 6213(b)(3) with respect to any amount applied, credited,

or refunded as a result of an application described in paragraph (a) of this section may be made before there is a final partnership-level determination with respect to the losses, deductions, or credits on which the application is based. As provided in section 6213(b)(1), the Internal Revenue Service shall mail notice of any such assessment to the partner filing the application. The notice shall also inform the partner of the partner's limited right to elect to treat items as nonpartnership items as provided in paragraph (d) of this section.

(d) *Limited right to elect to treat items as nonpartnership items*—(1) *In general.* A partner to whom the Internal Revenue Service mails a notice of suspension of action on a refund claim under paragraph (c) of this section may elect in accordance with this paragraph (d) to have all partnership items for the partnership taxable year in which the losses, deductions, or credits at issue arose treated as nonpartnership items.

(2) *Time and place of making election.* The election shall be made by filing a statement with the Internal Revenue Service office that mailed the notice of suspension. The statement may be filed at any time—

(i) After the date which is one year after the date on which the partnership return was filed for the partnership taxable year in which the items at issue arose; and

(ii) Before the date on which the Internal Revenue Service mails to the tax matters partner the notice of final partnership administrative adjustment for the partnership taxable year in which the items at issue arose. For purposes of this paragraph (d)(2), a partnership return filed before the last day prescribed by law for its filing (determined without regard to extensions) shall be treated as filed on the last day.

(3) *Contents of the statement.* The statement shall—

(i) Be clearly identified as an election to have partnership items treated as nonpartnership items because of notification of an assessment under section 6213(b)(3);

(ii) Identify the partnership by name, address, and taxpayer identification number;

(iii) Identify the partner making the election by name, address, and taxpayer identification number;

(iv) Specify the partnership taxable year to which the election applies; and

(v) Be signed by the partner making the election.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)–1T [Removed]

Par. 41a. Section 301.6231(c)–1T is removed.

Par. 42. Section 301.6231(c)–2 is added to read as follows:

§ 301.6231(c)–2 Special rules for certain refund claims based on losses, deductions, or credits from abusive tax shelter partnerships.

(a) *Claims subject to this section.* This section applies in the case of a claim for credit or refund based on losses, deductions or credits of a partnership if the Commissioner, or the Commissioner's delegate, determines, after review of available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

(1) A gross valuation overstatement; or

(2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). This section applies only with respect to a claim that is based upon the partner's original reporting on the partner's income tax return of partnership losses, deductions, or credits. Thus, this section does not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment). For purposes of this section, any income tax return requesting a credit or refund shall be treated as a claim for a credit or refund.

(b) *Determination of special enforcement area.* Granting a claim for credit or refund described in paragraph (a) of this section may encourage the proliferation of abusive tax shelter partnerships and make the eventual collection of taxes more difficult. Consequently, the Secretary hereby determines that such claims present special enforcement considerations within the meaning of section 6231(c)(1)(E).

(c) *Action on refund claims suspended.* In the case of a claim described in paragraph (a) of this section, the Internal Revenue Service may mail to the partner filing the claim a notice stating that no action will be taken on the partner's claim until the completion of the partnership-level proceedings. The notice shall also inform the partner of the partner's limited right to elect to treat items as nonpartnership items as provided in paragraph (d) of this section.

(d) *Limited right to elect to treat items as nonpartnership items*—(1) *In general.* A partner to whom the Internal Revenue Service mails a notice of suspension under paragraph (c) of this section may elect in accordance with this paragraph (d) to have all partnership items for the partnership taxable year in which the losses, deductions, or credits at issue arose treated as nonpartnership items.

(2) *Time and place of making election.* The election shall be made by filing a statement with the Internal Revenue Service office that mailed the notice of suspension. The statement may be filed at any time—

(i) After the date which is one year after the date on which the partnership return was filed for the partnership taxable year in which the items at issue arose; and

(ii) Before the date on which the Internal Revenue Service mails to the tax matters partner the notice of final partnership administrative adjustment for the partnership taxable year in which the items at issue arose. For purposes of this paragraph (d)(2), a partnership return filed before the last day prescribed by law for its filing (determined without regard to extensions) shall be treated as filed on the last day.

(3) *Contents of the statement.* The statement shall—

(i) Be clearly identified as an election to have partnership items treated as nonpartnership items because of notification of suspension of action on a refund claim;

(ii) Identify the partnership by name, address, and taxpayer identification number;

(iii) Identify the partner making the election by name, address, and taxpayer identification number;

(iv) Specify the partnership taxable year to which the election applies; and

(v) Be signed by the partner making the election.

(e) *Effective date.* This section applies with respect to any claim described in paragraph (a) of this section that is filed on or after October 4, 2001. For claims filed prior to October 4, 2001, see § 301.6231(c)–2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)–2T [Removed]

Par. 42a. Section 301.6231(c)–2T is removed.

Par. 43. Section 301.6231(c)–3 is added to read as follows:

§ 301.6231(c)–3 Limitation on applicability of §§ 301.6231(c)–4 through 301.6231(c)–8.

(a) *In general.* A provision of §§ 301.6231(c)–4 through 301.6231(c)–8 shall not apply with respect to partnership items arising in a partnership taxable year if, as of the date on which those items would otherwise begin to be treated as nonpartnership items under that provision—

(1) A notice of final partnership administrative adjustment with respect to those items has been mailed to the tax matters partner; and

(2) Either—

(i) The period during which an action with respect to that final partnership administrative adjustment may be brought under section 6226 has expired and no such action has been brought; or

(ii) The decision of the court in an action brought under section 6226 with respect to that final partnership administrative adjustment has become final.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)–3T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)–3T [Removed]

Par. 43a. Section 301.6231(c)–3T is removed.

Par. 44. Section 301.6231(c)–4 is added to read as follows:

§ 301.6231(c)–4 Termination and jeopardy assessment.

(a) *In general.* The treatment of items as partnership items with respect to a partner against whom an assessment of income tax under section 6851 (termination assessment) or section 6861 (jeopardy assessment) is made will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending with or within the partner's taxable year for which an assessment of income tax under section 6851 or 6861 is made shall be treated as nonpartnership items as of the moment before such assessment is made.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)–4T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)–4T [Removed]

Par. 44a. Section 301.6231(c)–4T is removed.

Par. 45. Section 301.6231(c)–5 is added to read as follows:

§ 301.6231(c)–5 Criminal investigations.

(a) *In general.* The treatment of items as partnership items with respect to a partner under criminal investigation for violation of the internal revenue laws relating to income tax will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the latest taxable year of the partner to which the criminal investigation relates shall be treated as nonpartnership items as of the date on which the partner is notified that the partner is the subject of a criminal investigation and written notification is sent by the Internal Revenue Service that the partner's partnership items shall be treated as nonpartnership items. The partnership items of a partner who is notified that the partner is the subject of a criminal investigation shall not be treated as nonpartnership items under this section unless and until such partner is sent written notification from the Internal Revenue Service of such treatment.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)–5T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)–5T [Removed]

Par. 45a. Section 301.6231(c)–5T is removed.

Par. 46. Section 301.6231(c)–6 is added to read as follows:

§ 301.6231(c)–6 Indirect method of proof of income.

(a) *In general.* The treatment of items as partnership items with respect to a partner whose taxable income is determined by use of an indirect method of proof of income will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the taxable year of the partner for which a deficiency notice based upon an indirect method of proof of income is mailed to the partner shall be treated as nonpartnership items as of the date on which that deficiency notice is mailed to the partner.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)–6T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)–6T [Removed]

Par. 46a. Section 301.6231(c)–6T is removed.

Par. 47. Section 301.6231(c)–7 is added to read as follows:

§ 301.6231(c)–7 Bankruptcy and receivership.

(a) *Bankruptcy.* The treatment of items as partnership items with respect to a partner named as a debtor in a bankruptcy proceeding will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the latest taxable year of the partner with respect to which the United States could file a claim for income tax due in the bankruptcy proceeding shall be treated as nonpartnership items as of the date the petition naming the partner as debtor is filed in bankruptcy.

(b) *Receivership.* The treatment of items as partnership items with respect to a partner for whom a receiver has been appointed in any receivership proceeding before any court of the United States or of any State or the District of Columbia will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the latest taxable year of the partner with respect to which the United States could file a claim for income tax due in the receivership proceeding shall be treated as nonpartnership items as of the date a receiver is appointed in any receivership proceeding before any court of the United States or of any State or the District of Columbia.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)–7T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)–7T [Removed]

Par. 47a. Section 301.6231(c)–7T is removed.

Par. 48. Section 301.6231(c)–8 is added to read as follows:

§ 301.6231(c)–8 Prompt assessment.

(a) *In general.* The treatment of items as partnership items with respect to a partner on whose behalf a request for a prompt assessment of tax under section 6501(d) is filed will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner

arising in any partnership taxable year ending with or within any taxable year of the partner with respect to which a request for a prompt assessment of tax is filed shall be treated as nonpartnership items as of the date that the request is filed.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)–8T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)–8T [Removed]

Par. 48a. Section 301.6231(c)–8T is removed.

Par. 49. Section 301.6231(d)–1 is added to read as follows:

§ 301.6231(d)–1 Time for determining profits interest of partners for purposes of sections 6223(b) and 6231(a)(11).

(a) *Partner owns interest at close of year.* For purposes of section 6223(b) (relating to special rules for partnerships with more than 100 partners) and section 6231(a)(11) (relating to 5-percent groups), except as otherwise provided in this section, the profits interest held by a partner, directly or indirectly through one or more pass-thru partners, in a partnership (the source partnership) to which subchapter C of chapter 63 of the Internal Revenue Code applies shall be determined at the close of the source partnership's taxable year.

(b) *Partner does not own interest at close of year.* If the entire direct and indirect interest of a partner in a source partnership is terminated by virtue of a disposition by such partner of such interest (or by virtue of the disposition of an interest held by one or more pass-thru partners through which the partner holds an interest), then the profits interest of such partner in the source partnership shall be measured as of the moment before the disposition causing such termination. The preceding sentence shall not apply with respect to a termination if subsequent to such termination and before the close of the source partnership's taxable year the partner acquires a direct or indirect interest in the source partnership.

(c) *Disposition of last remaining portion of interest is disposition of entire interest.* If a partner (or a pass-thru partner through which a partner holds an interest) makes several partial dispositions of an interest in a source partnership during a taxable year of the source partnership, paragraph (b) of this section will apply with respect to the disposition which causes a termination of the partner's entire direct and indirect interest in the source partnership.

(d) *No profits interest in certain cases.* If—

(1) The interest of a partner in a partnership is entirely disposed of before the close of the taxable year of the partnership; and

(2) No items of the partnership for that taxable year are required to be taken into account by the partner, then that partner has no profits interest in the partnership for that taxable year.

(e) *Examples.* The provisions of this section may be illustrated by the following examples. Assume in all examples that there have been no reacquisitions prior to the close of the source partnership's taxable year. The examples are as follows:

Example 1. B holds an interest in partnership P through T, a pass-thru partner. P uses a fiscal year ending June 30 as P's taxable year; B and T use the calendar year as the taxable year. As of the close of P's taxable year ending June 30, 2002, T holds an interest in P and B holds an interest in P through T. The profits interest held by B in P through T for that year is determined as of June 30, 2002.

Example 2. Assume the same facts as in *Example 1,* except that B sold the entire interest that B held in P through T on November 5, 2001. The profits interest held by B in P through T for P's taxable year ending June 30, 2002, is determined as of the moment before the sale on November 5, 2001.

Example 3. C holds an interest in partnership P through T, a pass-thru partner. C, P, and T all use the calendar year as the taxable year. T disposes of T's interest in P on June 5, 2002. The profits interest held by C in P through T for 2002 is determined as of the moment before the disposition on June 5, 2002.

Example 4. Assume the same facts as in *Example 3,* except that C sold C's entire interest in T (and, therefore, C's entire interest that C held in P through T) on March 15, 2002. The profits interest held by C in P through T for 2002 is determined as of the moment before the sale on March 15, 2002.

Example 5. On January 1, 2002, D held a 2 percent profits interest in partnership P. Both D and P use the calendar year as the taxable year. On August 1, 2002, D transfers three-fourths of D's profits interest in P to E. On September 1, 2002, D sells D's remaining .5 percent profits interest in P to F. For purposes of sections 6223(b) and 6231(a)(11), D had a .5 percent profits interest in P for 2002.

Example 6. Assume the same facts as in *Example 5,* except that on January 1, 2002, D also held a 1 percent profits interest in partnership P through T, a pass-thru partner which also uses the calendar year as the taxable year. In addition to the sale to E on August 1, 2002, D sold a portion of D's interest in T on December 1, 2002, such that after the sale, D held a .2 percent profits interest in P through T. D made no other transfers of interests in either P or T. For purposes of sections 6223(b) and 6231(a)(11), D had a .7 percent profits interest in P for 2002.

(f) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(d)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(d)–1T [Removed]

Par. 49a. Section 301.6231(d)–1T is removed.

Par. 50. Section 301.6231(e)–1 is added to read as follows:

§ 301.6231(e)–1 Effect of a determination with respect to a nonpartnership item on the determination of a partnership item.

(a) *In general.* The determination of an item after it has become a nonpartnership item with respect to a partner is not controlling in the determination of that item with respect to other partners. Thus, for example, the determination by a court in a separate proceeding relating to a partner that a certain partnership expenditure was deductible does not bind either the Internal Revenue Service or the other partners in a later partnership or other proceeding.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(e)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(e)–1T [Removed]

Par. 50a. Section 301.6231(e)–1T is removed.

Par. 51. Section 301.6231(e)–2 is added to read as follows:

§ 301.6231(e)–2 Judicial decision not a bar to certain adjustments.

(a) *In general.* A court decision with respect to a partner's income tax liability attributable to nonpartnership items shall not be a bar to further proceedings with respect to that partner's income tax liability if that partner's partnership items become nonpartnership items after the appropriate time to include such nonpartnership items in the earlier court proceeding has passed. Thus, the Internal Revenue Service could issue a later deficiency notice for the same taxable year with respect to that partner or that partner could bring a refund suit with respect to those items that have become nonpartnership items.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(e)–2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(e)–2T [Removed]

Par. 51a. Section 301.6231(e)–2T is removed.

Par. 52. Section 301.6231(f)–1 is added to read as follows:

§ 301.6231(f)–1 Disallowance of losses and credits in certain cases.

(a) *Application of section.* This section applies if—

(1) A partnership, whether domestic or foreign, that is required to file a return under section 6031 for a taxable year fails to file the return within the time prescribed; and

(2) At any time after the close of that taxable year, either—

(i) The tax matters partner of that partnership resides outside the United States; or

(ii) The books and records of that partnership are maintained outside the United States.

(b) *Computational adjustment permitted if return is not filed after mailing of notice.* Except as otherwise provided in paragraph (c) of this section, if—

(1) This section applies with respect to a partnership for a partnership taxable year;

(2) The Internal Revenue Service mails notice to a partner that the losses and credits arising from that partnership for that year will be disallowed to that partner unless the partnership files a return for that year within 60 days after the date on which the notice is mailed; and

(3) The partnership fails to file a return for that year within that 60-day period, the Internal Revenue Service may, without conducting a partnership-level proceeding, mail a notice of computational adjustment to that partner to reflect the disallowance of any loss (including a capital loss) or credit arising from that partnership for that year.

(c) *Restriction on notices under paragraph (b) of this section.* Neither the notice referred to in paragraph (b)(2) of this section nor the notice of computational adjustment referred to in paragraph (b) of this section may be mailed on a day on which—

(1) The tax matters partner of the partnership resides within the United States; and

(2) The books and records of the partnership are maintained within the United States. Thus, if this section applies with respect to a partnership for a taxable year solely because the tax matters partner of that partnership resided outside the United States for a period after the close of that taxable year and the tax matters partner later takes up residence within the United States, no notice may be mailed under paragraph (b) of this section while the tax matters partner resides within the United States.

(d) *No disallowance in certain circumstances.* If the person to whom the notice referred to in paragraph (b)(2) of this section is mailed establishes to the satisfaction of the Internal Revenue Service—

(1) That the losses and credits arising from the partnership for the year are proper; and

(2) That the partner has made a good faith effort to have the partnership file the required return; the Internal Revenue Service may allow the losses and credits in whole or in part.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(f)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(f)–1T [Removed]

Par. 52a. Section 301.6231(f)–1T is removed.

Par. 53. Section 301.6233–1 is added to read as follows:

§ 301.6233–1 Extension to entities filing partnership returns.

(a) *Entities filing a partnership return.* Except as provided in paragraph (c)(1) of this section, the provisions of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C) and the regulations thereunder shall apply with respect to any taxable year of an entity for which such entity files a partnership return as well as to such entity's items for that taxable year and to any person holding an interest in such entity at any time during that taxable year. Any final partnership administrative adjustment or judicial determination resulting from a proceeding under subchapter C with respect to such taxable year may include a determination that the entity is not a partnership for such taxable year as well as determinations with respect to all items of the entity that would be partnership items, as defined in section 6231(a)(3) and the regulations thereunder, if such entity had been a partnership in such taxable year (including, for example, any amounts taxable to an entity determined to be an association taxable as a corporation). For example, a final determination under subchapter C that an entity that filed a partnership return is an association taxable as a corporation will serve as a basis for a computational adjustment reflecting the disallowance of any loss or credit claimed by a purported partner with respect to that entity.

(b) *Partnership return filed but no entity found to exist*— Paragraph (a) of this section shall apply where a partnership return is filed for a taxable year but it is determined that there is no entity for such taxable year. For purposes of applying paragraph (a) of this section, the partnership return shall be treated as if it were filed by an entity. However, any final partnership administrative adjustment or judicial determination resulting from a proceeding under subchapter C with respect to such taxable year may also include a determination that there is no entity for such taxable year.

(c) *Exceptions.* Paragraph (a) of this section shall not apply to—

(1) Entities for any taxable year in which such entity would be excepted from the provisions of subchapter C of the Internal Revenue Code under section 6231(a)(1)(B) and the regulations thereunder (relating to the exception for small partnerships) if such entity were a partnership for such taxable year; and

(2) Entities for any taxable year for which a partnership return was filed for the sole purpose of making the election described in section 761(a).

(d) *Effective dates.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6233–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6233–1T [Removed]

Par. 53a. Section 301.6233–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 54. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 55. Section 602.101, paragraph (b) is amended by removing the entries for ''301.6222(a)–2T'', ''301.6222(b)–1T'', ''301.6222(b)–2T'', ''301.6222(b)–3T'', ''301.6227(b)–1T'', and adding the following entries to the table in numerical order:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6222(a)–2	1545–0790
301.6222(b)–1	1545–0790

CFR part or section where identified and described	Current OMB control No.
301.6222(b)–2	1545–0790
301.6222(b)–3	1545–0790
301.6223(b)–1	1545–0790
301.6223(c)–1	1545–0790
301.6223(e)–2	1545–0790
301.6223(g)–1	1545–0790
301.6223(h)–1	1545–0790
301.6224(b)–1	1545–0790
301.6224(c)–1	1545–0790
301.6224(c)–3	1545–0790
301.6227(c)–1	1545–0790
301.6227(d)–1	1545–0790
301.6229(b)–2	1545–0790
301.6230(b)–1	1545–0790
301.6230(e)–1	1545–0790
301.6231(a)(1)–1	1545–0790
* * * * *	
301.6231(c)–1	1545–0790
* * * * *	
301.6231(c)–2	1545–0790
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue Service.

Approved: September 20, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–24517 Filed 10–3–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–468; Re: Notice No. 910]

RIN: 1512–AAO7

Realignment of the Alexander Valley and Dry Creek Valley Viticultural Areas (2000R–298P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision realigns a boundary line between the Alexander Valley and the Dry Creek Valley viticultural areas, located in northern Sonoma County, California. This realignment is a result of a petition submitted by E. & J. Gallo Winery.

EFFECTIVE DATE: Effective December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA (415) 947–5192.

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692), which added 27 CFR part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What Is the Definition of an American Viticultural Area?

An American viticultural area is a delimited grape-growing region distinguishable by geographic features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) that distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features that can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Rulemaking Proceeding

Realignment of the Alexander Valley and Dry Creek Valley Viticultural Areas Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) received a petition from E. & J. Gallo Winery proposing the revision and realignment of a common boundary line between the Alexander Valley and the Dry Creek Valley viticultural areas, located in northern Sonoma County, California. This petition proposed realigning approximately 410 acres from the Dry Creek Valley area to the Alexander Valley area. The original petitions for these areas incorporated U.S.G.S. mapping section lines to define the boundary of this realignment area. To re-define the boundary line, the petitioner used geographic and climatic features.

The petitioner indicated 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 stated that the original boundary ignored distinctive geographic features, climatic differences and it now divides several vineyards. The original boundary line, in sections 4 and 5 of T.10 N., R.10 W. of the Geyserville Quadrangle, California, Sonoma Co., 7.5 Minute Series (Topographic), 1955, U.S.G.S. map, was defined primarily by the mapping section lines. According to the petitioner, there were no vineyards along this boundary section at the times the boundary line was petitioned and approved, in 1983 for Dry Creek Valley and 1984 for Alexander Valley.

The petitioner provided a Geyserville Quadrangle, California, Sonoma Co., 7.5 Minute Series (Topographic), 1955, U.S.G.S. map as evidence of a significant ridgeline along the proposed boundary line. This ridgeline defines the watershed dividing point between the Dry Creek Valley and Alexander Valley viticultural areas. With the original boundary line, 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 realignment will put the Gill Creek watershed into the Alexander Valley area, where it drains, and will keep the Dutcher Creek watershed within the Dry Creek Valley area.

The petitioner provided a chart of growing degree days for five vineyards in the Dry Creek Valley and Alexander Valley viticultural areas. This chart indicates that the Dry Creek Valley viticultural area is generally cooler than sites in the Alexander Valley viticultural area. The climate of the realigned area more closely reflects the warmer Alexander Valley than the cooler Dry Creek Valley.

3. Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking, Notice No. 910, was published in the **Federal Register** on February 5, 2001 (66 FR 8925), requesting comments from all interested persons concerning the realignment of these viticultural areas be received by April 6, 2001. ATF received no comments concerning this proposal.

4. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Final Rule?

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 rule because no requirement to collect information is imposed.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

These regulations will not have a significant economic impact on a substantial number of small entities. ATF does not wish to give the impression that by approving the realignment of a boundary line between the Alexander Valley and Dry Creek Valley viticultural areas it is endorsing wine produced in the area. The realignment of these two viticultural areas merely allows the wineries in these areas 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 and reputation of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

The final rule is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

5. Drafting Information

The principal author of this document is Nancy Sutton, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is 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).

Subpart C—Approved American Viticultural Areas

Par. 2. Section 9.53 is amended by revising paragraph (c)(6) and removing and reviewing paragraph (c)(7) as follows:

§ 9.53 Alexander Valley.

* * * * *

(c) *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;

(7) [Reserved]

* * * * *

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: July 27, 2001.

Bradley A. Buckles,

Director.

Approved: August 31, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 01–24903 Filed 10–3–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–10689]

RIN 2115–AG24

Temporary Requirements for Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: To ensure public safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard is temporarily changing notification requirements for vessels bound for or departing from U.S. ports. This rule temporarily lengthens the usual notification period from 24 to 96 hours prior to port entry, requires submission of reports to a central national clearinghouse, suspends exemptions for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, for some vessels operating on the Great Lakes, and vessels on scheduled routes, and requires information about persons onboard these vessels. These changes are necessary to ensure receipt of comprehensive and timely information on vessels entering U.S. ports. They will help provide better security information and minimize delays in collecting that information.

DATES: This temporary final rule is effective from October 4, 2001 to June 15, 2002. Comments and related material must reach the Docket Management Facility on or before January 18, 2002.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10689), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400

Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LTJG Marcus A. Lines, U.S. Coast Guard (G–MMP), at 202–267–6854. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–10689), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking, and the rule takes effect immediately. The changes made by this temporary rule are specifically authorized under 33 U.S.C. 1223(a)(5) and 1226 as a response to the terrorist acts that occurred on September 11, 2001, and to prevent similar occurrences. They are necessary to ensure receipt of comprehensive and timely information on vessels entering U.S. ports, and they will help provide better security information and minimize delays in collecting that information. Therefore, delay in implementing these changes is contrary to the public interest, and the Coast Guard finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and comment rulemaking and advance publication are not required.

Background and Purpose

On September 11, 2001, terrorists hijacked four airliners. Three crashed into targets in New York City and Washington, D.C. The fourth airliner, although apparently aiming for Washington, crashed in Somerset County, Pennsylvania. These attacks killed thousands of people and heightened the need for security checks on all modes of travel, particularly those modes by which foreign nationals can enter the country. In the maritime context extra time is needed for security checks, and vessels bound for U.S. ports could experience delays in entering port if required arrival information is not received early enough. The information currently required on the notification of arrival (NOA) does not provide sufficient data for security measures to protect our nation's ports and waterways. The temporary changes made by this rule will help provide better security information and minimize delays in collecting that information.

Discussion of Temporary Rule

Under the present requirements of 33 CFR part 160, subpart C, owners, agents, masters, operators, or persons in charge of vessels bound for U.S. ports must file notices of arrival before they enter port. (Persons required to submit reports will hereafter be called ''submitters.'') In general, the regulations apply to vessels greater than 300 gross tons—and to smaller foreign vessels entering the Seventh Coast Guard District—but there are several categories of exemption. Notices of arrival are also required for vessels and barges containing certain dangerous cargo, and submitters must file notices of departure (NODs) for these vessels and barges before they leave a port.

This rule:

- Changes submission times for NOAs;
- Changes where reports are submitted;
- Suspends exemptions from reporting requirements for some vessels;
- Requires additional information to be submitted on NOAs and NODs;
- Allows consolidated reports;
- Requires submitters to submit changes to previously reported information; and
- Changes the definition of certain dangerous cargo.

This temporary final rule does not change the provisions of 33 CFR 160.205. Therefore, any vessel that is unable to meet the reporting requirements set forth in this temporary final rule may request a waiver from the cognizant Captain of the Port.

Times for submission. Chart 1, below, summarizes the changes in submission times made by this rule.

CHART 1.—TIME FOR SUBMISSION

Vessel type & voyage time	NOA—Initial report		NOD—Initial report		NOA—Changes		NOD—Changes	
	Old	New	Old	New	Old	New	Old	New
Vessels greater than 300 GT with a voyage time of 96 hours or greater.	24 hours ... 160.207	At least 96 hours before entering each port of destination. 160.T208	None	None	None	As soon as practicable but no later than 24 hours before entering the port.	None	None
Vessels greater than 300 GT voyage time less than 96 hours.	24 hours ... 160.207	Before departing but no less than 24 hours before entering each port of destination. 160.T208	None	None	None	As soon as practicable but no later than 24 hours before entering the port.	None	None
All vessels carrying dangerous cargo, except barges, with a voyage time of 96 hours or greater.	24 hours ... 160.211(a)	At least 96 hours before entering each port of destination. 160.T212	At least 24 hours unless notification was made within 2 hours of arrival. 160.213	Same—160.T214	None	As soon as practicable but no later than 24 hours before entering the port.	None	Before departing
All vessels carrying dangerous cargo except barges with a voyage time of less than 96 hours.	24 hours ... 160.211(a)	Before departing but no less than 24 hours before entering each port of destination. 160.T212	At least 24 hours unless notification was made within 2 hours of arrival. 160.213	Same—160.T214	None	As soon as practicable but no later than 24 hours before entering the port.	None	Before departing
All barges carrying dangerous cargo.	4 hours ..... 160.211(b)	At least 12 hours before entering each port of destination. 160.T212	At least 4 hours before departing, unless notification was made within 2 hours of arrival. 160.211(b)	Same—160.T214	None	As soon as practicable but no later than 12 hours before entering port.	None	Before departing

NOA reports currently must be filed at least 24 hours prior to a vessel's entering port. The temporary rule increases that time to at least 96 hours, except for:

- Vessels, not carrying certain dangerous cargo, whose destination involves a voyage time of less than 96 hours' duration—these vessels must submit the NOA report before the vessel departs to begin its voyage, but not less than 24 hours before entering the port of destination;
- Vessels (except barges) carrying certain dangerous cargo whose destination involves a voyage time of less than 96 hours duration—these vessels must submit the NOA report before the vessel departs to begin its voyage, but not less than 24 hours before entering the port of destination; and
- Barges carrying certain dangerous cargo—currently reports for these barges must be filed at least 4 hours before entering the port of destination, and the temporary rule increases that time to at least 12 hours.

Vessels and barges carrying certain dangerous cargo are currently subject to NOD requirements. The submission times for these NODs—within two hours of arrival or at least four (for barges) or 24 hours (for other vessels) prior to departure—remain unchanged.

Reports submitted to central national clearinghouse. Most NOA and NOD reports will go to the new National Vessel Movement Center (NVMC) instead of to individual Captains of the Port (COTPs). The NVMC will reformat the reported data and distribute it immediately to cognizant COTPs. NOA reports for foreign vessels of 300 gross tons or less operating in the Seventh Coast Guard District must continue to be sent to cognizant COTPs.

Exemptions suspended. This temporary rule suspends existing exemptions so that Canadian-flag and some U.S. vessels operating on the Great Lakes, vessels on scheduled routes, and vessels entering U.S. ports in compliance with the Automated Mutual Assistance Vessel Rescue System (AMVER) are required to submit NOA reports.

New information required. Submitters must provide the following information in addition to the information currently required on NOAs and NODs:

- A general description of the vessel's cargo, e.g. grain, containers, oil, etc.;
- The date of departure from each port listed in the NOA. Estimated dates can be reported initially, with actual dates reported prior to each departure;
- Location or position information for reports filed for vessels not carrying certain dangerous cargo;
- Lists of every person on board the vessel. One list must be submitted for crewmembers and one for non-crewmembers including passengers. The lists must contain basic information about the person: name, date of birth, nationality, and (for crewmembers) position or duties on board ship. Many vessels already provide this information for use by the Immigration and Naturalization Service (INS) and can use INS reports to satisfy this new requirement.

Consolidated reporting. Submitters currently have to file separate NOA reports with the COTPs for each U.S. port their vessels intend to enter. This temporary rule allows submitters to file a single report listing all consecutive U.S. destinations during the voyage, along with estimated arrival dates for each port; but a vessel carrying dangerous cargo must notify the NVMC whenever it leaves a port listed in its NOA report.

Changes to submitted reports. Currently we do not require submitters to notify COTPs when information submitted in an NOA or NOD changes. This temporary rule requires submitters to notify the NVMC (or the COTP in the case of smaller foreign vessels in the Seventh District) when previously-submitted information changes. For example, a submitter must report the actual date of departure in place of the estimated date.

See Chart 1, above, for the submission times applicable to reporting changes. Changes to NOAs must be reported as soon as practicable but no less than 24 hours (12 hours for barges) prior to entering port. Changes to NODs must be reported prior to a vessel's departure. When reporting changes, submitters only have to report the information that is being added, deleted, or altered. A complete resubmission of all information is not necessary. Submitters only need to report changes in a vessel's arrival or departure time if the previously-reported date changes, or if a previously-reported time changes by six hours or more.

Definition of certain dangerous cargo. The 33 CFR 160.203 definition of certain dangerous cargo is being changed, to accomplish two objectives. First, the changes clarify the existing definition by consolidating Coast Guard and Research and Special Programs Administration (RSPA) requirements for certain Division 1.5 materials that may be allowed to be transported only under a RSPA exemption. Additionally, UN hazardous class division numbers are added to further clarify the products subject to this regulation. Second, the changes add certain hazardous material products the Coast Guard believes pose an undue risk to the public if these products were to be hijacked or subjected to intentional damage.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Assessment under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary; however, a Regulatory Assessment has been prepared and may be viewed in the docket for this project. Existing NOA regulations require vessels greater than 300 gross tons to provide the COTP of the vessel's port of arrival with specific information about the vessel and its voyage 24 hours before arriving in any U.S. port. Vessels that meet AMVER requirements, some vessels operating on the Great Lakes, and vessels on scheduled routes are exempt from the NOA reporting requirements in 33 CFR 160.207. As described in the ''discussion of temporary rule'' section of this preamble, the Coast Guard is temporarily changing NOA regulations. We estimate that providing the Coast Guard with the additional information about passengers, crew, and cargo will impose minimal burden on vessels already complying with the notification requirements of 33 CFR part 160, subpart C. By suspending some exemptions, the new rule imposes a heavier burden on vessels that are exempt under existing regulations but that now will be required to file NOA reports in accordance with § 160.T208. As explained below, the total cost of this temporary rule should not exceed $565,986:

Cost and Burden. Coast Guard data on Notification of Arrival information for 1998 and 1999 were used to estimate the maximum populations affected by this temporary rule. Table 1 categorizes the affected vessel population into four sub-populations. They are:

- ''Non-AMVER/Non-Great Lakes Vessels''—vessels already required to comply with NOA regulations;
- ''AMVER''—vessels complying with the Automated Mutual Assistance Vessel Rescue system and exempt from NOA requirements under existing regulations;
- ''Great Lakes Vessels''—vessels greater than 300 gross tons, on Great Lakes routes, that are exempt from NOA requirements under existing regulations; and
- ''Vessels on Scheduled Routes''—vessels operating upon a route that is described in a schedule that is submitted to the Captain of the Port for each port or place of destination listed in the schedule. The table also sets out the number of vessels and their total number of U.S. port calls (arrivals) for each vessel sub-population.

TABLE 1.—NUMBER OF VESSELS AND U.S. PORT CALLS FOR 1998 AND 1999

	1998	1999	Annual average	Monthly average
Non-AMVER/Non-Great Lakes:				
Vessels	9,795	9,538	9,667	NA
U.S. Port Calls	63,090	63,482	63,286	5,274
AMVER:				
Vessels	625	609	617	NA
U.S. Port Calls	4,027	4,052	4,040	337
Great Lakes:				
Vessels	83	82	83	NA
U.S. Port Calls	840	786	813	68
Totals:				
Vessels	10,503	10,229	10,367	NA
U.S. Port Calls	67,957	68,320	68,139	5,679

* These estimates include vessels on scheduled routes that will experience about the same costs as the other vessels in this population.

Currently, vessels less than 300 gross tons making ports of call in the Seventh Coast Guard District have to file NOA reports with the COTP. The temporary rule maintains this requirement, and the estimate of the vessels and port calls presented in Table 1 accounts for this special group. Additionally, under the current rule vessels have to file multiple NOA reports if they are visiting multiple U.S. ports on the same voyage. Under the temporary rule, vessels that make calls to multiple U.S. ports will not have to file multiple NOA reports; rather, the temporary rule allows a single report

listing all destinations in the United States along with estimated arrival dates for each port. The Coast Guard does not currently collect or maintain information on how many vessels make multiple U.S. port calls under separate NOA reports to estimate the number of consolidated reports under the temporary rule. The totals above, therefore, represent a conservative estimate, a ''worst-case scenario,'' of the numbers of vessels and NOA reports that will be affected by the temporary rule. Finally, vessels that make scheduled trips outside of their COTP zones will no longer be exempt from NOA requirements. We do not know how many of these vessels and port calls exist, though we know they are included in the population of non-AMVER/non-Great Lakes vessels. Additionally, we know their requirements are virtually identical to new requirements for non-AMVER/non-Great Lakes vessels; for the purposes of analysis, these vessels and port calls are included in the non-AMVER/non-Great Lakes population.

Cost of the Temporary Rule

For vessels covered by the current NOA rule, providing the Coast Guard with a list of the crew and a list of persons in addition to the crew will impose minimal burden, since this information is already collected on a form submitted to INS (INS form I–418). Vessels that were previously exempt from NOA requirements, however, will now have to provide the Coast Guard with NOA reports in addition to providing the crew/persons-in-addition-to-the-crew lists. Also, all vessels will now need to submit a brief description of the cargo on board.

For non-exempt vessels that were covered by the current NOA rulemaking or similar requirements (non-AMVER/non-Great Lakes, vessels on scheduled routes), we assume 10 minutes (0.167 hours) will be spent retrieving and transmitting the crew/persons-in-addition-to-the-crew lists and writing the paragraph concerning cargo. We assume that there will be a $2 transmittal fee (fax, email, telephone, etc.) to provide this information to the Coast Guard. We assume that clerical labor will complete these tasks at a cost of $31.00 per hour (loaded labor rate, 2001). Based on 1998 and 1999 data, we assume an average of 5,274 port calls are made each month, which means an estimated 47,466 port calls will be made over the time period of this rulemaking (9 months-until June 15, 2002). The summary of unit costs and total rulemaking costs for non-AMVER/non-Great Lakes vessels is presented in Table 2.

TABLE 2.—TOTAL RULEMAKING COSTS FOR NON-AMVER/NON-GREAT LAKES VESSELS

[October 2001–June 2002]

Port Calls during Temporary Rule	Labor Hours per Port Call	Labor Hours during Temporary Rule	Cost per Labor Hour	Cost per Information Transmittal	Total Rulemaking Cost for These Vessels
47,466	0.167	7,911	$31.00	$2.00	$340,173

Detail may not calculate to total due to independent rounding.
*These estimates include vessels on scheduled routes that will experience about the same costs as the other vessels in this population.

Previously exempt vessels (AMVER and vessels that transit only the Great Lakes) will incur the new cost of an NOA report, since they have not had to complete or submit this documentation in the past. Based on the current, OMB-approved Collection of Information for NOA (OMB–2115–0557), we estimate that it will take 10 minutes (0.167 hours) to complete the report, plus an additional 5 minutes (0.083 hours) for the general description of the cargo. We assume that clerical labor will complete the report at a cost of $31.00 per hour. Additionally, these vessels will need to develop and submit the crew/persons-in-addition-to-the-crew lists, which they did not previously have to complete. Based on information from the INS (OMB–1115–0083), it will require 60 minutes (1.000 hour) to complete the lists, for a total of 75 minutes (1.250 hours) for the entire submission (NOA report, cargo description, and crew/persons-in-addition-to-the-crew lists). There will be a $2 transmittal fee to provide the information to the Coast Guard. Based on 1998 and 1999 data, we assume an average of 405 port calls are made by this population of vessels each month, which means an estimated 3,645 port calls will be made over the time period of this rulemaking. The summary of unit costs and total rulemaking costs for AMVER/Great Lakes vessels is presented in Table 3.

TABLE 3.—TOTAL RULEMAKING COSTS FOR AMVER/GREAT LAKES VESSELS

[October 2001–June 2002]

Port Calls during Temporary Rule	Labor Hours per Port Call	Labor Hours during Temporary Rule	Cost per Labor Hour	Cost per Information Transmittal	Total Rulemaking Cost for These Vessels
3,645	1.250	4,549	$31.00	$2.00	$148,305

Detail may not calculate to total; due to independent rounding.

Finally, all vessels affected will need to communicate with the National Vessel Movement Center (NVMC) upon departure from a U.S. port when their next port of call is also a U.S. port. Vessels will phone or fax the date of departure to the NVMC along with the name of the port just departed. The NVMC will transmit this information to the COTP in the next port of call. We assume this will require 1 minute (0.017 hours) per departure and clerical labor ($31.00 per hour) will make the call or send the fax. We assume the transmittal fee will be $1.00 per call/fax. There are an estimated 5,679 departures each month, which corresponds to the equal number of monthly arrivals. There will be an estimated 51,111 departures over the 9-month period of the temporary rule (until June 15, 2002). The cost and burden for notifying NVMC of the date of departure and last port of call is presented in Table 4.

TABLE 4.—TOTAL RULEMAKING COSTS FOR PROVIDING NVMC WITH DATE OF DEPARTURE AND LAST PORT OF CALL INFORMATION

[October 2001–June 2002]

Port Departures during Temporary Rule	Labor Hours per Port Call	Labor Hours during Temporary Rule	Cost per Labor Hour	Cost per Information Transmittal	Total Rulemaking Cost for These Vessels
51,111	0.017	852	$31.00	$1.00	$77,508

Detail may not calculate to total; due to independent rounding.

The total cost and burden of the rule is presented in Table 5.

TABLE 5.—TOTAL RULEMAKING COST FOR ALL AFFECTED VESSELS [OCTOBER 2001–JUNE 2002]

	Arrivals/Departures	Cost per Arrival/ Departure	Burden per Arrival/ Departure (hours)	Total Rulemaking Cost	Total Rulemaking Burden
Arr. Non-AMVER/Non-Great Lakes	47,466	$7.17	0.167	$340,173	7,911
Arr. AMVER/Great Lakes	3,645	40.75	1.250	148,305	4,549
Dep. all vessels	51,111	1.52	0.017	77,508	852
Totals	102,222	.....	.....	$565,986	13,312

Detail may not calculate to total due to independent rounding.
* These estimates include vessels on scheduled routes that will experience about the same costs as the other vessels in this population.

The temporary rule is expected to divert current Coast Guard resources without any real change in operating costs. No new costs for the Coast Guard are anticipated.

Need for the Temporary Rule

This rule will ensure the timely receipt of advance information about vessels and people entering U.S. ports and will help minimize disruption to commerce. The additional information required by this temporary rule will increase security and provide protection for the nation's ports and waterways. There will be some savings from the consolidated NOA submission for two or more consecutive arrivals at U.S. call.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule was not preceded by a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule modifies an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Advance Notice of Vessel Arrival and Departure.

OMB Control Number: 2115–0557.

Summary of the Collection of Information: The Coast Guard requires pre-arrival messages from any vessel entering a port or place in the United States. This rule will amend 33 CFR part 160 to temporarily require:

- earlier receipt of the notice of arrival—96 hours instead of 24 hours—from vessels currently required to provide advance notification of arrival;
- notice of arrival reports to be submitted to a central clearinghouse, the National Vessel Movement Center;
- suspend the current exemption from notice of arrival reporting requirements for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, some vessels operating on the Great Lakes, and vessels on scheduled routes; and
- require crew lists, passenger lists, and general description of cargo to be

provided as additional items in the notice of arrival report.

The temporary changes will be in effect until June 15, 2002.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard must temporarily change regulations relating to the Notifications of Arrival requirements.

Proposed use of Information: This information is required to control vessel traffic, develop contingency plans, and enforce regulations.

Description of the Respondents: The respondents are owners, agents, masters, operators, or persons in charge of vessels bound for or departing from U.S. ports.

Number of Respondents: The existing OMB-approved collection number of respondents is 9,834. This temporary rule will increase the number of respondents by 533 to a total of 10,367.

Frequency of Response: The existing OMB-approved collection annual number of responses is 126,722. This temporary rule will increase the number of responses by 9,556 to a total of 136,278.

Burden of Response: The existing OMB-approved collection burden of response is 10 minutes (0.167 hours). This temporary rule will increase the burden of response by 5 minutes (0.083 hours) to a total of 15 minutes (0.250 hours).

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 21,288 hours. This temporary rule will increase the total annual burden by 17,749 hours to a total of 39,037 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. Due to the circumstances surrounding this temporary rule, we asked for ''emergency processing'' of our request. We received OMB approval for the collection of information on September 26, 2001. It is valid until March 31, 2002.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. We received OMB approval for the collection of information on September 26, 2001. It is valid until March 31, 2002.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, the effects of this rule are discussed elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This temporary final rule changes the requirements established in the notification of arrival regulations. They are procedural in nature and therefore are categorically excluded. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and recordkeeping requirements; Vessels; Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 160 as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

Subpart C—Notifications of Arrival, Departures, Hazardous Conditions, and Certain Dangerous Cargoes

1. The authority citation for part 160 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1226, 1231; 49 CFR 1.46.

2. In § 160.201, temporarily suspend paragraph (c) and (d), and temporarily add paragraphs (e), (f), and (g) to read as follows:

§ 160.201 Applicability and exceptions to applicability.

* * * * *

(e) Section 160.T208 does not apply to the following:

(1) Each vessel of 300 gross tons or less, except a foreign vessel of 300 gross tons or less entering any port or place in the Seventh Coast Guard District as described by § 3.35–1(b) of this chapter.

(2) Each vessel operating exclusively within a Captain of the Port zone.

(3) [Reserved]

(4) Each vessel arriving at a port or place under force majeure.

(5) [Reserved]

(6) Each barge.

(7) Each public vessel.

(8) [Reserved].

(9) U.S. vessels, except tank vessels, operating solely between U.S. ports on the Great Lakes.

(f) Sections 160.T212 and 160.T214 apply to each vessel arriving at or departing from a port or place in the United States carrying certain dangerous cargo. A vessel submitting a notice of arrival under § 160.T212 need not submit another notice as required in § 160.T208.

(g) Sections 160.T208, 160.T212, and 160.T214 apply to each vessel upon the waters of the Mississippi River between its mouth and mile 235, Lower Mississippi River, above Head of Passes. Sections 160.207, 160.211, and 160.213 do not apply to each vessel upon the waters of the Mississippi River between its sources and mile 235, above Head of Passes, and all the tributaries emptying thereinto and their tributaries, and that part of the Atchafalaya River above its junction with the Plaquemine-Morgan City alternate waterway, and the Red River of the North.

3. In § 160.203, temporarily suspend the definition of ''Certain dangerous cargo'', and temporarily add in alphabetic order new definitions for ''Certain dangerous cargo,'' ''Crewmember'', ''Nationality'', and ''Persons in addition to crewmembers'' to read as follows:

§ 160.203 Definitions.

* * * * *

Certain dangerous cargo includes any of the following:

(a) Division 1.1 or 1.2, explosive materials, as defined in 49 CFR 173.50.

(b) Division 5.1, Oxidizing materials, or Division 1.5, blasting agents, for which a permit is required under 49 CFR 176.415, or for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(c) Division 4.3, Spontaneously Combustible products in excess of 60 metric tons per vessel.

(d) Division 6.1, Poison-Inhalation Hazard, products in bulk packagings.

(e) Class 7, highway route controlled quantity radioactive material, or fissile material, controlled shipment, as defined in 49 CFR 173.403.

(f) Each cargo under Table 1 of 46 CFR part 153 when carried in bulk.

(g) Each cargo under Table 4 of 46 CFR part 154 when carried in bulk.

(h) Butylene Oxide, Chlorine, and Phosphorous, elemental when carried in bulk.

Crewmember means all persons carried on board the vessel to provide navigation and maintenance of the vessel, its machinery, systems, and arrangements essential for propulsion and safe navigation or to provide services for other persons on board.

* * * * *

Nationality means the state (nation) in which a person is a citizen or to which a person owes permanent allegiance.

* * * * *

Persons in addition to crewmembers means any person onboard the vessel, including passengers, who are not included on the list of crewmembers.

* * * * *

4. A new temporary § 160.T204 is added to read as follows:

§ 160.T204 Reporting of notification of arrival and Notification of departure.

(a)(1) Until October 15, 2001, all vessels required to report the information in § 160.T208, § 160.T212, or § 160.T214, must submit the report to the cognizant Captain of the Port (COTP).

(2) From October 15, 2001, until June 15, 2002, all vessels required to report notice of arrival and departure information in §§ 160.T208, 160.T212, or 160.T214, other than vessels 300 or less gross tons operating in the Seventh Coast Guard District, must submit the notice to the National Vessel Movement Center (NVMC), United States Coast Guard, 408 Coast Guard Drive, Kearneysville, W.V., 25430, by:

(i) Telephone at 1–800–708–9823;

(ii) Fax at 1–800–547–8724; or

(iii) E-mail at SANS@NVMC.USCG.gov.

Note to paragraph (a):

Information about the National Vessel Movement Center is available on its website at *http://www.nvmc.uscg.gov/.*

(b) Those vessels 300 or less gross tons operating in the Seventh Coast Guard District required by § 160.T208, § 160.T212, or § 160.T214 to report notice of arrival and departure information must submit the notice to the cognizant Captain of the Port (COTP).

§ 160.207 [Suspended]

5. Temporarily suspend § 160.207.

6. A new temporary § 160.T208 is added to read as follows:

§ 160.T208 Notice of arrival: Vessels bound for ports or places in the United States.

(a) The owner, agent, master, operator, or person in charge of a vessel on a voyage of 96 hours or more must submit the information under paragraph (c) of this section at least 96 hours before entering the port or place of destination.

(b) The owner, agent, master, operator, or person in charge of a vessel on a voyage of less than 96 hours must submit the information under paragraph (c) of this section prior to departing the port or place of departure, but no less than 24 hours before entering the port or place of destination.

(c) The following information must be submitted as prescribed by § 160.T204:

(1) Name of port(s) or place(s) of destination in the United States;

(2) Estimated date and time of arrival at each port or place;

(3) Name of the vessel;

(4) Country of registry of the vessel;

(5) Call sign of the vessel;

(6) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel;

(7) Name of the registered owner of the vessel;

(8) Name of the operator of the vessel;

(9) Name of the classification society of the vessel;

(10) General description of cargo onboard the vessel (e.g.: grain, container, oil, etc.);

(11) Date of departure and name of the port from which the vessel last departed;

(12) Name and telephone number of a 24-hour point of contact for each port included in the notice of arrival;

(13) Location or position of the vessel at the time of the report;

(14) A list of crewmembers onboard the vessel. The list must include the following information for each person:
(i) Full name;
(ii) Date of birth;
(iii) Nationality;
(iv) Passport number or mariners document number; and
(v) Position or duties on the vessel;
(15) A list of persons in addition to the crew onboard the vessel. The list must include the following information for each person:
(i) Full name;
(ii) Date of birth;
(iii) Nationality; and
(iv) Passport number.
(d) You may submit a copy of INS Form I–418 to meet the requirements of paragraphs (c)(14) and (c)(15) of this section.
(e)(1) Any changes to the information required by paragraphs (c) or (h) of this section must be reported as soon as practicable but no less than 24 hours before entering the port of destination.
(2) Any changes to the arrival time or the departure time in a submitted notice of arrival (NOA) that are less than six (6) hours need not be reported.
(3) When reporting changes, only report specific items to be corrected in the submitted NOA report. Do not resubmit the entire NOA report.
(f) International Safety Management (ISM) Code (Chapter IX of SOLAS) Notice. If you are the owner, agent, master, operator, or person in charge of a vessel that is 500 gross tons or more and engaged on a foreign voyage to the United States, you must provide the ISM Code notice described in paragraph (g) as follows:
(1) ISM Code notice beginning January 26, 1998, if your vessel is—a passenger vessel carrying more than 12 passengers, a tank vessel, a bulk freight vessel, or a high-speed freight vessel.
(2) ISM Code notice beginning July 1, 2002, if your vessel is—a freight vessel not listed in paragraph (f)(1) of this section or a self-propelled mobile offshore drilling unit (MODU).
(g) ISM Code notice includes the following:
(1) The date of issuance for the company's Document of Compliance certificate that covers the vessel.
(2) The date of issuance for the vessel's Safety Management Certificate, and,
(3) The name of the Flag Administration, or the recognized organization(s) representing the vessel flag administration, that issued those certificates.
(h) Any vessel planning to enter two or more consecutive ports or places in the United States during a single voyage may submit one consolidated Notification of Arrival at least 96 hours before entering the port or place of destination. The consolidated notice must include the port name and estimated arrival date for each destination of the voyage. Any vessel submitting a consolidated notice under this section must still meet the requirements of paragraph (e) of this section concerning changes to required information.

§ 160.211 [Suspended]

7. Temporarily suspend § 160.211.
8. A new temporary § 160.T212 is added to read as follows:

§ 160.T212 Notice of arrival: Vessels carrying certain dangerous cargo.

(a)(1) The owner, agent, master, operator, or person in charge of a vessel, other than a barge, carrying certain dangerous cargo that is bound for a port or place in the United States that is 96 hours or more away from the vessel's port of departure must report the information in paragraph (b) of this section at least 96 hours before entering the port or place of destination; or
(2) The owner, agent, master, operator, or person in charge of a vessel, other than a barge, carrying certain dangerous cargo that is bound for a port or place in the United States that is less than 96 hours away from the vessel's port of departure must report the information in paragraph (b) of this section prior to departing the port or place of departure, but no less than 24 hours before entering the port or place of destination.
(b) The following information must be submitted as prescribed by § 160.T204:
(1) Name of port(s) or place(s) of destination in the United States;
(2) Estimated date and time of arrival at each port or place;
(3) Name of the vessel;
(4) Country of registry of the vessel;
(5) Call sign of the vessel;
(6) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel;
(7) Name of the registered owner of the vessel;
(8) Name of the operator of the vessel;
(9) Name of the classification society of the vessel;
(10) Date of departure and name of the port from which the vessel last departed;
(11) Name and telephone number of a 24-hour point of contact for each port included in the notice of arrival;
(12) Location or position of the vessel at the time of the report;
(13) Name of each of the certain dangerous cargoes carried;
(14) Amount of each of the certain dangerous cargoes carried;
(15) Stowage location of each of the certain dangerous cargoes carried;
(16) General description of cargo, other than dangerous cargoes, onboard the vessel;
(17) Operational condition of the equipment under § 164.35 of this chapter;
(18) A list of crewmembers onboard the vessel. The list must include the following information for each person:
(i) Full name;
(ii) Date of birth;
(iii) Nationality;
(iv) Passport number or mariners document number; and
(v) Position or duties on the vessel;
(19) A list of persons in addition to the crew onboard the vessel. The list must include the following information for each person:
(i) Full name;
(ii) Date of birth;
(iii) Nationality; and
(iv) Passport number; and
(c) You may submit a copy of INS Form I–418 to meet the requirements of paragraphs (b)(18) and (b)(19) of this section.
(d)(1) Any changes to the information required by paragraphs (b) or (f) of this section must be reported as soon as practicable but no less than 24 hours before entering the port of destination.
(2) Any changes to the information required by paragraph (e) of this section must be reported as soon as practicable but no less than 12 hours before entering the port of destination.
(3) Any changes to the arrival time or the departure time in a submitted notice of arrival (NOA) that are less than six (6) hours need not be reported.
(4) When reporting changes, only report specific items to be corrected in the submitted NOA report. Do not resubmit the entire NOA report.
(e) The owner, agent, master, operator, or person in charge of a barge bound for a port or place in the United States carrying certain dangerous cargo shall report the information required in paragraphs (b)(1) through (b)(6) and (b)(10) through (b)(19) of this section as prescribed by § 160.T204 at least 12 hours before entering that port or place.
(f) Any vessel planning to enter two or more consecutive ports or places in the United States during a single voyage may submit one consolidated Notification of Arrival at least 96 hours before entering the first U.S. port or place of destination. The consolidated notice must include the port name and estimated arrival date for each

destination of the voyage. Any vessel submitting a consolidated notice under this section must still meet the requirements of paragraphs (d) of this section concerning changes to required information.

§ 160.213 [Suspended]

9. Temporarily suspend § 160.213.

10. A new temporary § 160.T214 is added to read as follows:

§ 160.T214 Notice of departure: Vessels carrying certain dangerous cargo.

(a) The owner, agent, master, operator, or person in charge of a vessel, except a barge, departing from a port or place in the United States for any other port or place and carrying certain dangerous cargo, must submit a notice of departure as prescribed by § 160.T204 at least 24 hours before departing, unless this notification was made within 2 hours after the vessel's arrival, of the:

(1) Name of port(s) or place(s) of destination in the United States;

(2) Estimated date and time of arrival at each port or place;

(3) Name of the vessel;

(4) Country of registry of the vessel;

(5) Call sign of the vessel;

(6) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel;

(7) Name of the registered owner of the vessel;

(8) Name of the operator of the vessel;

(9) Name of the classification society of the vessel;

(10) Date and time of departure and name of the port from which the vessel last departed;

(11) Name and telephone number of a 24-hour point of contact for each port included in the notice of arrival;

(12) Location or position of the vessel at the time of the report;

(13) Name of each of the certain dangerous cargoes carried;

(14) Amount of each of the certain dangerous cargoes carried;

(15) Stowage location of each of the certain dangerous cargoes carried;

(16) General description of cargo, other than dangerous cargoes, onboard the vessel;

(17) Operational condition of the equipment under § 164.35 of this chapter;

(18) A list of crewmembers onboard the vessel. The list must include the following information for each person:

(i) Full name;

(ii) Date of birth;

(iii) Nationality;

(iv) Passport number or mariners document number; and

(v) Position or duties on the vessel;

(19) A list of persons in addition to the crew onboard the vessel. The list must include the following information for each person:

(i) Full name;

(ii) Date of birth;

(iii) Nationality; and

(iv) Passport number; and

(b) You may submit a copy of INS Form I–418 to meet the requirements of paragraphs (a)(18) and (a)(19) of this section.

(c)(1) Any changes to the information required by paragraph (a) of this section must be reported prior to departing.

(2) Any changes to the arrival time or the departure time in a submitted notice of departure (NOD) that are less than six (6) hours need not be reported.

(3) When reporting changes, only report specific items to be corrected in the submitted NOD report. Do not resubmit the entire NOD report.

(d) The owner, agent, master, operator, or person in charge of a barge departing from a port or place in the United States for any other port or place and carrying certain dangerous cargo shall report the information required in paragraphs (a)(1) through (a)(6) and (a)(10) through (19) of this section as prescribed by § 160.T204 at least 4 hours before departing, unless this report was made within 2 hours after the barge's arrival.

Dated: October 1, 2001.

Paul J. Pluta,

Rear Admiral, USCG, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–24984 Filed 10–2–01; 11:29 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–7072–1]

Clean Air Act Full Approval of Operating Permits Program In Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to fully approve the operating permits program submitted by the State of Idaho. Idaho's operating permits program was submitted in response to the directive in the Clean Air Act that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction.

EFFECTIVE DATE: November 5, 2001.

ADDRESSES: Copies of the State of Idaho's submittal, and other supporting information used in developing this final full approval, are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

SUPPLEMENTARY INFORMATION

I. Background

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain Federal criteria. Idaho's operating permit program was submitted in response to this directive. EPA granted interim approval to Idaho's air operating permit program on December 6, 1996 (61 FR 64622).

On July 9, 1998, the State of Idaho sent a letter to EPA addressing the interim approval issues, transmitting its revised title V statutes and rules, and requesting full approval of Idaho's air operating permits program. EPA received additional submittals from Idaho addressing the interim approval issues and transmitting additional changes in its statutes and rules on May 25, 1999, and March 15, 2001. In these submittals, the State also discussed other changes it has made to its operating permits program since it obtained interim approval and requested approval of these changes. These changes include designating the Idaho Division of Environmental Quality, which was the permit issuing authority at the time of interim approval, as a State Department, now entitled the Idaho Department of Environmental Quality (IDEQ). These changes also include a renumbering and recodification of all of Idaho's air quality regulations.

EPA reviewed the program revisions submitted by the State of Idaho and promulgated a proposal to approve Idaho's title V operating permits program, and, with one exception, the other changes mentioned above, on August 13, 2001 (66 FR 42490). EPA received no public comment on that proposal.

II. Final Action

EPA is granting full approval to the operating permits program submitted by IDEQ based on the revisions submitted on July 9, 1998, May 25, 1999, and March 15, 2001, which satisfactorily address the program deficiencies identified in EPA's December 6, 1996 Interim Approval Rulemaking. *See* 61 FR 64622. In addition, EPA is approving, as a title V operating permit program revision, IDEQ's designation as a department and the Idaho title V permitting authority; the recodification and renumbering of Idaho's title V rules; and Idaho's revised regulations for permit revision procedures, compliance certification, and the deferral of permitting nonmajor sources submitted on the same dates. EPA is not taking action on Idaho's revised fee rules. As previously discussed, EPA will be conducting a review of Idaho's title V fees to determine whether the fees collected are sufficient to cover its title V permit program costs and whether title V fees are used solely for title V permit program costs. *See* 66 FR 42495.

Consistent with EPA's previous actions, this approval does not extend to ''Indian Country,'' as defined in 18 U.S.C. 1151. *See* 64 FR 8247, 8250–8251 (February 19, 1999); 59 FR 42552, 42554 (August 18, 1994).

III. Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 5, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 24, 2001.

Charles E. Findley,

Acting Regional Administrator, Region 10.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. In appendix A to part 70, the entry for Idaho is amended by revising paragraph (a) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Idaho

(a) Idaho Division of Environmental Quality: submitted on January 20, 1995, and supplemented on July 14, 1995, September 15, 1995, and January 12, 1996; interim

approval effective on January 6, 1997; revisions submitted on July 9, 1998, May 25, 1999, and March 15, 2001; full approval effective on November 5, 2001.

* * * * *

[FR Doc. 01–24900 Filed 10–3–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2211]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

DATES: Effective October 4, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted September 12, 2001, and released September 21, 2001. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 264C3 and adding Channel 263C1 at Northport.

3. Section 73.202(b), the Table of FM Allotments under American Samoa, is amended by removing Channel 230C1 and adding Channel 284A at Leone.

4. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 223C1 and adding Channel 223C0 at Eagar.

5. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 222C2 and adding Channel 222A at Holyoke.

6. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 268A and adding Channel 268C2 at Gaylord.

7. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 238C and adding Channel 238C0 at Jackson.

8. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 252A and adding Channel 252C3 at Broken Bow.

9. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 249A and adding Channel 248C1 at Raton.

10. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 255C1 and adding Channel 255C2 at Leander.

11. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 291A and adding Channel 291B at Exmore.[1]

12. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 287C2 and adding Channel 287A at Pine Bluffs.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–24864 Filed 10–3–01; 8:45 am]

BILLING CODE 6712–01–P

[1] On July 11, 2001, the authorization for Channel 291B1, Exmore, Virginia, was amended by a one-step application to specify Channel 291A in lieu of Channel 291B1. *See* 66 FR 39453, July 31, 2001.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013-01; I.D. 092801A]

Fisheries of the Exclusive Economic Zone Off Alaska; Sharpchin and Northern Rockfish in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Area

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

ACTION: Fishery closure.

SUMMARY: NMFS closes directed fishing for Atka mackerel in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels using trawl gear not fishing for a Community Development Quota (CDQ). This action is necessary to prevent overfishing of the sharpchin/northern rockfish species group.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 30, 2001, until 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

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

The Magnuson-Stevens Fishery Conservation and Management Act requires that conservation and management measures prevent overfishing. The 2001 overfishing level for the sharpchin/northern rockfish species group in the BSAI is established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001 and 66 FR 37167, July 17, 2001) as 9,020 metric tons (mt). The acceptable biological catch (ABC) is established as 6,764 mt and in the Aleutian Islands subarea the non-CDQ total allowable catch (TAC) is established as 5,733 mt. The Administrator, Alaska Region, (Administrator) NMFS estimates that as

of September xx, 2001, the non-CDQ TAC of sharpchin/northern rockfish will be caught.

NMFS closed directed fishing for sharpchin/northern rockfish in Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001 and 66 FR 37167, July 17, 2001). Substantial trawl fishing effort was directed at harvesting non-CDQ Atka mackerel in the Aleutian Islands subarea during 2001. This fishery has significant bycatch of sharpchin/northern rockfish, averaging about 120 mt per day during the week ending September 29, 2001. Data from the groundfish observer program also indicates that high bycatch rates of sharpchin/northern rockfish are experienced in the Atka mackerel fishery and range from 15 percent to 40 percent. These high rates are inherent in the directed Atka mackerel fishery and will not be reduced if fishermen were only prohibited from retaining sharpchin/northern rockfish pursuant to § 679.20 (d)(2). If the trawl non-CDQ Atka mackerel fishery were allowed to continue beyond September 30, 2001, the ABC for sharpchin/northern rockfish would be significantly exceeded.

The Administrator has determined, in accordance with § 679.20 (d)(3) that closing the directed fishery for non-CDQ Atka mackerel by vessels using trawl gear is necessary to prevent overfishing of the sharpchin/northern rockfish species group, and is the least restrictive measure to achieve that purpose. Without this directed fishery closure, significant incidental catch of sharpchin/northern rockfish would occur by trawl vessels targeting non-CDQ Atka mackerel.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent overfishing of sharpchin/northern rockfish in the Aleutian Islands subarea of the BSAI constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent overfishing of sharpchin/northern rockfish in the Aleutian Islands subarea of the BSAI constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 28, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–24786 Filed 9–28–01; 4:04 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 193
Thursday, October 4, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–79–AD]

RIN 2120–AA64

Airworthiness Directives; Univair Aircraft Corporation Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 86–22–09, which applies to Univair Aircraft Corporation (Univair) Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes. AD 86–22–09 currently requires you to inspect the fuel line nipple for damage and replace any suspect part. AD 86–22–09 resulted from reports of failures of the fuel line nipple caused by improper installation or incorrect alignment. This proposed AD would require you to accomplish the following on airplanes with the gascolator connected to the side of the carburetor: Replace any aluminum fuel line nipple with a brass or steel fuel line nipple, inspect for the existence of double support tubes on the gascolator, and install these tubes if they do not exist. The proposed AD would not affect those airplanes with the gascolator mounted on the firewall. The proposed AD is the result of incidents where the fuel line nipple failed on the above-referenced airplanes. The actions specified by the proposed AD are intended to prevent failure of the fuel line nipple or the gascolator because of the current airplane design configuration (aluminum fuel line nipples or no double support tubes on the gascolator). Such failure could result in a lack of fuel to the engine with consequent loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before November 16, 2001.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–79AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; telephone: (303) 375–8882; facsimile: (303) 375–8888. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249; telephone: (303) 342–1087; facsimile: (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–79–AD.'' We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

Reports of fuel leakage due to cracked fuel line nipples on Univair 415 series and Models F1 and F1A airplanes caused FAA to issue AD 86–22–09, Amendment 39–5457. This AD requires you to do the following on Univair Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes:

—Inspect the fuel line nipple between the gascolator and the carburetor for cracks, incorrect alignment, or over torque; and

—Replace any suspect part.

These actions are specified in Univair Service Bulletin No. 24A, dated August 22, 1986.

What Has Happened Since AD 86–22–09 To Initiate This Action?

The FAA has received reports of failure of the aluminum fuel line nipple, part number AN911–2D, on airplanes that were in compliance with AD 86–22–09. In one instance, a Model (ERCO) 415–C made an emergency landing because the failure led to engine fuel starvation.

AD 86–22–09 requires a one-time inspection of the part number AN911–2D fuel line nipple. Since 15 years have passed since issuance of that AD, most of the affected airplanes have had this inspection accomplished. If the fuel line nipple was not suspect at the time of inspection, then final AD compliance was obtained. In 15 years, cracks could develop in the aluminum fuel line nipple on these airplanes in compliance with AD 86–22–09.

In addition, Univair Service Bulletin No. 24A, dated August 22, 1986, also specifies replacing any aluminum fuel line nipple with a brass or steel fuel line nipple and installing double support tubes on the gascolator for those airplanes with a gascolator connected to the side of the carburetor. AD 86–22–09 required the fuel line nipple replacement only if damage was found during the one-time inspection and did not require installation of the double support tubes.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Univair (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes of the same type design;

—The replacement and installation specified in the previously-referenced service information should be accomplished on the referenced airplanes that have the gascolator connected to the side of the carburetor; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 86–22–09 with a new AD that would require you to accomplish the following on airplanes with the gascolator connected to the side of the carburetor:

—Replace any aluminum fuel line nipple with a brass or steel fuel line nipple; and

—Inspect for the existence of double support tubes on the gascolator and install these tubes if they do not exist.

The proposed AD would not affect those airplanes with the gascolator mounted on the firewall.

Cost Impact

How Many Airplanes Would This Proposed AD Impact

We estimate that this proposed AD would affect 2,500 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes

We estimate the following costs to accomplish the proposed replacement and installation:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $60 per hour = $120	$70	$190 per airplane	$475,000

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 86–22–09, Amendment 39–5457, and by adding a new AD to read as follows:

Univair Aircraft Corporation: Docket No. 2000–CE–79–AD; Supersedes AD 86–22–09, Amendment 39–5457.

(a) *What airplanes are affected by this AD?* This AD affects all serial numbers of Models (ERCO) 415–C, (ERCO) 415–CD, (ERCO) 415–D, (ERCO) 415–E, (ERCO) 415–G, (Forney) F–1, and (Forney) F–1A airplanes that:

(1) Are certificated in any category; and

(2) Have the gascolator connected to the side of the carburetor. This AD does not affect those airplanes with the gascolator mounted on the firewall.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the fuel line nipple or the gascolator because of the current airplane design configuration (aluminum fuel line nipples or no double support tubes on the gascolator). Such failure could result in a lack of fuel to the engine with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace any aluminum fuel line nipple, part number AN911–2D (or FAA-approved equivalent part number), with one made of brass or steel, part number AN911–02 (or FAA-approved equivalent part number.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.	In accordance with Univair Service Bulletin No. 24A, dated August 22, 1986.

Actions	Compliance	Procedures
(2) Inspect for the existence of double support tubes on the gascolator and install these tubes if they do not exist, as follows: (i) For all affected airplanes except for (Forney) F–1 and (Forney) F–1A airplanes, install part numbers 48076 and 48096 (or FAA-approved equivalent part numbers) double support tubes; and. (ii) For all affected (Forney) F–1 and (Forney) F–1A airplanes, install part numbers 48098 and 48099 (or FAA-approved equivalent part numbers) double support tubes.	Inspect within the next 50 hours TIS after the effective date of this AD and install the double support tubes prior to further flight after the inspection, unless already accomplished.	In accordance with Univair Service Bulletin No. 24A, dated August 22, 1986.
(3) Do not install, on any affected airplane, an aluminum fuel line nipple, part number AN911–2D (or FAA-approved equivalent part number).	As of the effective date of this AD	Not Applicable.
(4) Do not install a gascolator on the side of the carburetor on any affected airplane, unless the double support tubes specified in paragraph (d)(2)(i) or (d)(2)(ii) of this AD are installed.	As of the effective date of this AD	Not Applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Denver Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) Alternative methods of compliance approved in accordance with AD 86–22–09, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Satish Lall, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249; telephone: (303) 342–1087; facsimile: (303) 342–1088.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; telephone: (303) 375–8882; facsimile: (303) 375–8888. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 86–22–09, Amendment 39–5457.

Issued in Kansas City, Missouri, on September 27, 2001.

Dorenda Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–24782 Filed 10–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require modification of the down drive brackets of the left- and right-hand sides of the inboard flap track 1 assembly and installation of bigger bolts and washers. This action is necessary to prevent failure of the bolts due to flexural loads caused by transmission jam loading, which could lead to a ''flap-locked'' condition, causing reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–142–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamra Elkins, Aerospace Engineer,

International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2669; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–142–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that for certain airplanes on which Airbus Modification 45326 has been accomplished, the strength of the connection bolts at the down drive bracket of the track 1 assembly on the inboard flap is not sufficient. The bolts could fail due to flexural loads caused by transmission jam loading. Failure of the bolts, if not corrected, could result in a ''flap-locked'' condition, causing reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–57–3067, dated October 12, 2000, and Revision 01, dated April 10, 2001 (for Model A330 series airplanes); and Service Bulletin A340–57–4075, dated October 12, 2000, and Revision 01, dated April 10, 2001 (for Model A340 series airplanes). These service bulletins describe procedures for, among other things, modifiying the down drive brackets on the left- and right-hand inboard flap track 1 assembly, re-identifying the tracks, and installing bigger bolts and washers to improve the strength of the connection at the down drive brackets. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–125(B), dated April 4, 2001 (for Model A330 series airplanes), and French airworthiness directive 2001–123(B), dated April 4, 2001 (for Model A340 series airplanes), in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletins include in their effectivity only those airplanes which received Airbus Modification 45326 in production, the proposed AD specifies the broader effectivity noted in the French AD, which includes those airplanes certified to receive Airbus Modification 45326.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed modifications and installations, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,020, or $780 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 2001–NM–142–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category, on which Airbus Modification 45326 has been accomplished in production, except those airplanes on which Airbus Modification 47619 has been accomplished in production or on which Airbus Service Bulletin A330–57–3067, dated October 12, 2000, or Revision 01, dated April 10, 2001 (for Model 330 series airplanes); or Airbus Service Bulletin A340–57–4075, dated October 12, 2000, or Revision 01, dated April 10, 2001 (for A340 series airplanes) has been accomplished in service.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bolts due to flexural loads caused by transmission jam loading, which could lead to a ''flap-locked'' condition, causing reduced controllability of the airplane, accomplish the following:

Modification and Installation of Bigger Bolts and Washers

(a) Within 36 months since date of manufacture of the airplane, or within 6 months from the effective date of this AD, whichever occurs later, modify the down drive brackets of the left- and right-hand inboard flap track 1 assembly by accomplishing all actions specified in the Accomplishment Instructions of the service bulletin specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A330 series airplanes: Airbus Service Bulletin A330–57–3067, dated October 12, 2000; or Airbus Service Bulletin A330–57–3067, Revision 01, dated April 10, 2001.

(2) For Model A340 series airplanes: Airbus Service Bulletin A340–57–4075, dated October 12, 2000; or Airbus Service Bulletin A340–57–4075, Revision 01, dated April 10, 2001.

Spares

(b) As of the effective date of this AD, no person shall install, on any airplane, an inboard flap track 1 assembly unless it has been modified in accordance with this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–125(B), dated April 4, 2001 (for Model A330 series airplanes), and French airworthiness directive 2001–123(B), dated April 4, 2001 (for Model A340 series airplanes).

Issued in Renton, Washington, on September 27, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–24781 Filed 10–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes. This proposal would require replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors. This action is prompted by mandatory continuing airworthiness information from a foreign airworthiness authority. The actions specified by the proposed AD are intended to prevent false smoke warnings from the smoke detectors in the cargo compartment. A false smoke warning prompts the flight crew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire. Repeated false smoke warnings create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted.

DATES: Comments must be received by November 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket Number 2001–NM–250–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-

ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7505: fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–250–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 series airplanes. TCCA advises that the smoke detectors in the cargo compartment have proven to be susceptible to dirt, condensation, and electromagnetic interference, which has resulted in over 30 incidents of false ''Cargo Smoke'' warnings on the engine indication and crew alerting system (EICAS). The actions specified by the proposed AD are intended to prevent false smoke warnings from the smoke detectors in the cargo compartment. A false smoke warning prompts the flight crew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire. Repeated false smoke warnings create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted.

Explanation of Relevant Service Information

Bombardier has issued Bombardier Service Bulletin 601R–26–016, Revision A, Dated June 15, 2001, which describes procedures for replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–21, dated May 23, 2001, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 281 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors, and that the average labor rate is $60 per work hour. The cost of required parts is approximately $4,136 ($876 for one smoke detector kit and $1,630 each for two smoke detectors). Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,195,936 or $4,256 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–250–AD.

Applicability: Model Bombardier Model CL–600–2B19 series airplanes, serial numbers 7003 through 7480 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent false smoke warnings from the smoke detectors in the cargo compartment, which prompt the flight crew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire, or which create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Replace the existing smoke detectors having part number (P/N) 473052, which are located in the cargo compartment, with new, improved smoke detectors having P/N 473597–19, in accordance with Bombardier Service Bulletin 601R–26–016, Revision A, dated June 15, 2001.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–21, dated May 23, 2001.

Issued in Renton, Washington, on September 27, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–24780 Filed 10–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–229–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3 series airplanes. This proposal would require a one-time inspection of the installation of the bearing housings of the elevator torque shaft assembly, and corrective action if necessary. This action is necessary to prevent failure of the elevator torque shaft, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–229–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–229–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001–NM–229–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–229–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3 series airplanes. The CAA advises that an operator reported freeplay of the bearing housings of the elevator torque shaft assembly at frame station 74 due to incorrect installation of the bearing housings of the elevator torque shaft. This condition, if not corrected, could result in failure of the elevator torque shaft and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Shorts has issued the following service bulletins, and the CAA has issued the following British airworthiness directives:

Model/series	Short Brothers service bulletin	Date of service bulletin	Corresponding British airworthiness directive
SD3–60 Sherpa	SD360 SHERPA–27–6	May 22, 2001	003–05–2001
SD3 Sherpa	SD3 SHERPA–27–5	May 22, 2001	008–05–2001
SD360	SD360–27–31	May 22, 2001	009–05–2001
SD330	SD330–27–39	May 22, 2001	007–05–2001

The service bulletins describe procedures for a one-time inspection of the elevator torque shaft to ensure that the bearing housings are securely mounted, without any obvious or apparent movement relative to the mounting structure. The CAA classified the service bulletins as mandatory and issued the above-referenced British airworthiness directives to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

The service bulletins recommend that operators submit reports of inspection results to the manufacturer. While ADs do not typically require a report, the inspection results will enable the manufacturer to determine the prevalence of the corrosion in the affected fleet. Therefore, Note 3 has been included in this proposed AD to advise operators accordingly.

Cost Impact

The FAA estimates that 75 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,000, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers PLC: Docket 2001–NM–229–AD.

Applicability: All Model SD3 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the elevator torque shaft, which could result in reduced controllability of the airplane, accomplish the following:

Inspection

(a) Within 60 days after the effective date of this AD: Perform a detailed visual inspection of the bearing housings of the elevator torque shaft assembly to detect discrepancies (including movement of the housings relative to the mounting structure), in accordance with the applicable service bulletin listed in the following table:

TABLE 1.—SERVICE BULLETINS

For model	Inspect in accordance with Short Brothers service bulletin	Dated
(1) SD3–60 Sherpa series airplanes	SD360 SHERPA–27–6	May 22, 2001.
(2) SD3 Sherpa series airplanes	SD3 SHERPA–27–5	May 22, 2001.
(3) SD360 series airplanes	SD360–27–31	May 22, 2001.
(4) SD330 series airplanes	SD330–27–39	May 22, 2001.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Action

(b) If any discrepancy is found during the inspection required by paragraph (a) of this AD: Prior to further flight, replace any affected part with a new part, in accordance with the applicable service bulletin listed in Table 1 of this AD.

Note 3: The service bulletins listed in Table 1 of this AD recommend that operators submit a report of their inspection findings to the manufacturer. Although operators may submit such a report, this AD does not require it.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in British airworthiness directives 003–05–2001, 008–05–2001, 009–05–2001, and 007–05–2001.

Issued in Renton, Washington, on September 28, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–24874 Filed 10–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–224–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. This proposal would require a one-time inspection to detect corrosion of the flap structure and machined ribs, corrective actions if necessary, and reprotection of the rib boss bores. This action is necessary to detect and correct corrosion in the flap structure and machined ribs, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–224–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must

be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001–NM–224–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. The CAA advises that, during routine maintenance, corrosion was detected at various locations within the flap structure and machined ribs. Additional corrosion in this location has since been identified through specific inspections. Corrosion in the flap structure and machined ribs, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–066, dated May 15, 2001, which describes procedures for a one-time detailed visual inspection to detect corrosion of the flap structure and machined ribs. Corrective actions for corrosion specified by the service bulletin include, among other things, repair of corrosion by blending to specified limits, a follow-up liquid penetrant inspection of the blended area to detect any remaining corrosion, and a single repeated detailed visual inspection. For all airplanes, the service bulletin describes procedures for reprotection of the rib boss bores. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 002–05–2001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed in the section titled ''Difference Between Proposed AD and Service Bulletin.''

The service bulletin recommends that operators submit reports of inspection results to the manufacturer. While ADs do not typically require a report, the inspection results will enable the manufacturer to determine the prevalence of the corrosion in the affected fleet. Therefore, Note 3 has been included in this proposed AD to advise operators accordingly.

Difference Between Proposed AD and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by either the FAA, or the CAA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the CAA would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 160 work hours per airplane (including access, testing, and close-up) to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $576,000, or $9,600 per airplane.

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

rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–224–AD.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category; except those modified in accordance with BAE Systems Modification HCM01694F.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion in the flap structure and machined ribs, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspection

(a) Within 6 years since the date of manufacture of the airplane, or within 2 years after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect corrosion of the flap structure and machined ribs, in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–066, dated May 15, 2001.

(1) *If no corrosion is detected:* Prior to further flight, reprotect the boss bores in accordance with the service bulletin.

(2) *If any corrosion is detected:* Except as required by paragraph (b) of this AD, accomplish the actions required by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) *Prior to further flight:* Perform corrective actions and reprotect the boss bores in accordance with the service bulletin.

(ii) Within 3 years but not sooner than 2 years following the reprotection specified by paragraph (a)(2)(i) of this AD: Repeat the detailed visual inspection.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) If any inspection required by this AD reveals any corrosion or other discrepancy for which the service bulletin specifies to contact the manufacturer for appropriate action: Prior to further flight, repair per a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent).

Note 3: BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–066 recommends that operators submit a report of their inspection findings to the manufacturer. Although operators may submit such a report, this AD does not require it.

Spares

(c) As of the effective date of this AD, no person may install a flap on any affected airplane, unless the inspection and applicable corrective actions have been accomplished in accordance with the requirements of this AD.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in British airworthiness directive 002–05–2001.

Issued in Renton, Washington, on September 28, 2001.

Charles Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–24873 Filed 10–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; Model A300 F4–605R Airplanes; Model A300 B4–600 and A300 B4–600R Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series

airplanes; and certain Model A310 series airplanes. This proposal would require repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. This proposal also would provide for optional terminating action for the repetitive inspections. This action is necessary to prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–205–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–205–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, the FAA examined fuel system wiring with regard to the possible effects that wire degradation may have on arc propagation.

In 1997 in a parallel preceding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations, and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (*e.g.,* inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (*e.g.,* inadequate maintenance, contamination, improper repair, and mechanical damage).

Identification of Unsafe Condition

The FAA has received reports of wire chafing and short circuits in the area of the wing leading edge/pylon interface on airplanes affected by this proposed AD. In some cases, this has resulted in in-flight turnbacks. Significant clearance is necessary between the structural components in this area. This clearance

is closed by a seal installed on the fillet fairing. On some airplanes, the seal has been torn from the forward fillet fairing between the pylon and the wing. Air flowing through the gap created by the torn seal damages the electrical bundles by chafing against the wiring and/or the feeder cables located inside the pylon. This condition, if not corrected, could result in short circuits at the wing leading edge/pylon interface and consequent loss of the power supply generator and/or system functions.

Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is continuing, and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins:

Procedures	Service bulletin	Model/series
Repetitive general visual inspections of the fillet seals and feeder cables to detect damage; repair if necessary; and application of protection to the feeder cables.	A300–24–0053, Revision 05, dated January 3, 2001	A300
	A300–24–6011, Revision 05, dated May 18, 2001	A300–600
	A310–24–2021, Revision 06, dated May 18, 2001	A310
Repetitive general visual inspections of the wiring looms in the wing/pylon interface to detect chafing, burning, or short circuits; repair, if necessary; and application of protection to the wiring looms and the bundles routed through the convoluted conduits between rib 10 and rib 12.	A300–24–0083, Revision 03, dated January 3, 2001	A300
	A300–24–6039, Revision 06, dated April 6, 2001	A300–600
	A310–24–2052, Revision 04, dated April 6, 2001	A310
Replacement of fillet panel assemblies with improved parts to improve the sealing between the fillets and wings, which would eliminate the need for the repetitive inspections described above.	A300–54–0095, Revision 01, dated January 3, 2001	A300
	A300–54–6032, Revision 03, dated January 3, 2001	A300–600
	A310–54–2033, Revision 01, dated January 3, 2001	A310

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Service Bulletins A300–24–0053, A300–24–6011, and A310–24–2021 refer to Airbus Service Bulletins A300–24–0054, A300–24–6013, and A310–24–2024, respectively, as additional sources of service information for repair.

U.S. Type Certification of the Airplanes

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Airbus Service Bulletins A300–24–0053, A300–24–6011, A310–24–2021, A300–24–0083, A300–24–6039, and A310–24–2052, described previously.

Cost Impact

The FAA estimates that 107 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 6 work hours per airplane to inspect the seals/cables at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $38,520, or $360 per airplane, per inspection cycle.

It would take approximately 5 work hours per airplane to inspect the wiring looms and apply the protection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $32,100, or $300 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to perform the optional terminating action, it would take approximately 5 work hours per airplane to replace the fillet panel assemblies, at an average labor rate of $60 per work hour. Required parts would cost approximately $350 to $470 per airplane. Based on these figures, the cost impact of the optional terminating action on U.S. operators is estimated to be $650 to $770 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 2001–NM–205–AD.

Applicability: The following airplanes, certificated in any category:

TABLE 1.—APPLICABILITY

Model—	Excluding those modified per Airbus modification—
A300 B2–1C, A300 B2–203, A300 B2K–3C, and A300 B4 series airplanes	11349 or 12309.
A300 F4–605R airplanes, A300 B4–600 series airplanes, and A300 B4–600R series airplanes	11348 or 12303.
A310 series airplanes	11350 or 12310.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions, accomplish the following:

Inspections

(a) Within 500 flight hours after the effective date of this AD, perform a general visual inspection to detect damage (including erosion and tearing) and deterioration of the fillet seals and feeder cables, in accordance with Airbus Service Bulletin A300–24–0053, Revision 05, dated January 3, 2001 (for Model A300 series airplanes); A300–24–6011, Revision 05, dated May 18, 2001 (for Model A300–600 series airplanes); or A310–24–2021, Revision 06, dated May 18, 2001 (for Model A310 series airplanes). Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours, until the actions specified by paragraph (c) are accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection to each feeder cable in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: For Model A300–600 series airplanes: Accomplishment prior to the effective date of this AD of the actions specified by Airbus Service Bulletin A300–24–6011, Revision 04, and A310–24–2021, Revision 05, both dated April 20, 1999, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Note 4: Airbus Service Bulletins A300–24–0053, A300–24–6011, and A310–24–2021 refer to Airbus Service Bulletins A300–24–0054, A300–24–6013, and A310–24–2024, respectively, as additional sources of service information for repair.

(b) Within 500 flight hours after the effective date of this AD: Perform a general visual inspection of the wiring looms in the area of the wing leading edge/pylon interface to detect damage (including chafing, burning, and short circuits), in accordance with Airbus Service Bulletin A300–24–0083, Revision 03, dated January 3, 2001 (for Model A300 series airplanes); A300–24–6039, Revision 06, dated April 6, 2001 (for Model A300–600 series airplanes); or A310–24–2052, Revision 04, dated April 6, 2001 (for Model A310 series airplanes); as applicable. Repeat the inspection thereafter at least every 1,000 flight hours, until the actions specified by paragraph (c) of this AD have been accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

Note 5: Accomplishment prior to the effective date of this AD of the inspection in accordance with Airbus Service Bulletin A300–24–0083, Revision 02, dated March 29, 1999; A300–24–6039, Revision 05, dated February 11, 2000; or A310–54–2052, Revision 03, dated March 5, 1999; as applicable; is acceptable for compliance with the requirements of paragraph (b) of this AD.

Optional Terminating Action

(c) Replacement of the fillet panel assemblies with new, improved assemblies, in accordance with Airbus Service Bulletin A300–54–0095, Revision 01 (for Model A300 series airplanes); A300–54–6032, Revision 03 (for Model A300–600 series airplanes); or A310–54–2033, Revision 01 (for Model A310 series airplanes); all dated January 3, 2001; terminates the requirements of this AD.

Alternative Methods of Compliance

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Issued in Renton, Washington, on September 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–24872 Filed 10–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM01–11–000]

Electronic Service of Documents

September 27, 2001.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comments on the advisability of modifying its regulations to permit the

Commission to serve documents on parties through electronic means (eService). Further, the Commission seeks comment on whether persons are interested in a subscription service allowing for documents issued by the Commission to be ''pushed'' by electronic means to the individual (eDistribution). eDistribution would be unrelated to the Commission's obligation to serve parties to a proceeding. To receive eDistribution, the individual would not have to have intervened in a proceeding before the Commission. In addition, the Commission seeks comment on the Commission's role, if any, in encouraging electronic service between parties to a proceeding as contemplated by Order No. 604.[1]

DATES: Comments on this NOI are due on November 2, 2001.

ADDRESSES: All comments should refer to Docket No. RM01–11–000 and should be addressed to: Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

John White, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1812, *john.white@ferc.fed.us.*

Wilbur Miller, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0953, *wilbur.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION:

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM01–11–000]

Electronic Service of Documents; Notice of Inquiry

September 27, 2001.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is inviting comments on a proposal to permit the service of documents by the Commission in electronic format, in order to improve the efficiency of the Commission's service (eService). The Commission is also exploring the public's interest in a separate mechanism to ''push'' documents it issues to individuals by electronic means without the individual having to intervene (eDistribution). Finally, the Commission invites comments whether the Commission has a role in encouraging electronic service of documents between parties. This Notice of Inquiry (NOI) is limited in scope to the issue of electronic service of the Commission's issuances and electronic service among parties. The NOI is not intended to explore other aspects of the Commission's service regulations.

II. Background and Discussion

On May 26, 1999, the Commission issued a rule in Docket No. RM99–6–000 permitting participants to proceedings before the Commission voluntarily to serve documents on one another by electronic means.[2] At that time, the Commission limited the scope of the rule to service among participants, and did not effect any change regarding service on or by the Commission's Office of the Secretary (OSEC).[3] In this NOI, the Commission wishes to gauge the public's interest in having the Commission serve documents by electronic means.

In order to increase the efficiency with which it carries out its program responsibilities, the Commission has been implementing measures to use information technology in order to reduce the amount of paperwork required in its proceedings, and to speed, where possible, the task of analysis. This NOI is a step in the process of replacing paper issuances with electronic issuances by exploring the advisability of a final rule allowing the formal service of issuances via electronic means.

Further, some industry sources have informed the Commission of their perception that individuals and organizations sometimes file motions to intervene to ensure being informed of developments in proceedings before the Commission. The Commission wishes to investigate the efficacy of a self-registering automated electronic distribution mechanism for the informal promulgation of the Commission's issuances. This mechanism would obviate the need for persons not interested in becoming a party to the proceeding to intervene just to be kept informed.

The Commission's regulations currently allow, among other things, the formal service of documents ''to participants who have agreed to receive service via the specified electronic means.''[4] This regulation currently allows electronic service to occur between participants who have reached agreement on the details of how (*e.g.,* via e-mail) and in what format (*e.g.,* in MS-Word word-processing file format) an electronic document is to be delivered. The Commission wishes to determine what, if anything, the Commission can do to encourage electronic service among the parties to a proceeding.

To further its goal of efficient distribution and service of documents, the Commission wishes the parties to address the following questions relating to each of the named topics.

1. eService of Commission Issuances

The Commission believes its operations would be more efficient if it were to serve its issuances via e-mail (eService of Commission Issuances, instead of sending FERC Issuances by regular mail) to parties on the Service List. Also, the Commission notes that the Administrative Office of the U.S. Courts for several years has facilitated the filing of case documents in electronic formats in four district courts and five bankruptcy courts, and plans to have this capability available to more than 200 bankruptcy, district, and appellate courts by 2005. Where applicable, the courts require attorneys to register to participate in the electronic filing process in particular cases, and automatically issue a notice (via email) to such registered attorneys when any registered attorney makes an electronic filing. Some courts have adopted service by electronic means where electronic filing was adopted.[5]

In view of the above, the Commission seeks responses to the following questions:

a. Would adopting eService of Commission issuances via e-mail be easier for recipients of the documents than receiving paper service? What problems might this introduce? How might such problems be mitigated or eliminated?

b. Would recipients of eService of Commission issuances want to receive an eService e-mail as soon as the Commission issues a document? Would grouping items into a relatively few e-mails sent every two or three hours throughout the day or even grouping all items into a single e-mail at the end of the day be preferable?

c. Currently Commission issuances are available through the Commission's website in ASCII,[6] Wordperfect format,

[1] 64 FR 31493 (June 11, 1999); FERC Stats. & Regs., Regulations Preambles July 1996–December 2000, ¶ 31,074 (May 26, 1999).

[2] *Id.*

[3] *Id.* at 31,495.

[4] 18 CFR 385.2010 (2001).

[5] *See* United States Bankruptcy Court, Southern District of New York, In re Electronic Means of Filing, Signing, and Verification issued January 19, 2001 and United States Bankruptcy Court, Northern District of Georgia General Order No. 5, January 26, 2000.

[6] ASCII refers to the American Standard Code for Information Interchange, a code for character representation.

and TIF (tagged image file format, a graphical format). Would these or other formats, such as PDF, be preferable for eService? Would a link to the document on the Commission's website be preferable (though its integrity would be guaranteed only for a specific time period)? Describe how the size of the document might influence this decision.

d. Under what circumstances would it be feasible for the Commission to use eService as the default method of service with the option to receive paper service only upon request?

2. eDistribution

The Commission also proposes to adopt a mechanism (eDistribution) that would permit an individual/organization to register his/her/its e-mail address in a Commission proceeding so that the individual/organization would automatically be e-mailed issuances from that proceeding without having to formally intervene. Accordingly, the Commission seeks comments on the following matters:

a. How is eDistribution a more desirable mechanism for distribution than retrieving copies of documents from the Commission Issuance Posting System and the Records Information Management System on the Commission's website?

b. Would eDistribution reduce the number of parties filing motions to intervene simply to remain aware of developments in a proceeding? To what extent is filing motions for this reason a common practice (provide percentage of interventions submitted for this purpose if known)? What other benefits might accrue from eDistribution?

c. What features would such a mechanism need to maximize its utility?

d. Would it be beneficial if the Commission were to e-mail the URLs/internet-links (*e.g.,* in RIMS-on-the-Web) of other documents besides Commission issuances through the eDistribution mechanism? What specific benefits would accrue? What features would such a service have?

e. What, if any, private enterprises are providing a service like eDistribution? Please describe them if any exist.

f. FERC may institute a pilot program for eDistribution prior to finalizing rules on the eService of Commission Issuances. FERC is considering the imposition of a cost-recovering fee for this service. How would this affect your usage of such a service?

3. eService Between Parties

The Commission seeks comment on whether the process of electronic service between parties is working adequately or can be improved.[7]

a. What has been the experience of parties providing electronic service to one another?

b. Is it easy for parties to identify others who are interested in electronic service? Would designating those parties on the Service List who have expressed a willingness to participate in electronic service expedite the parties efforts to arrange electronic service?

c. In what ways could the Commission encourage the more widespread adoption of e-service between parties? For example, should the Commission be a central repository for e-mail addresses of parties who wish to serve or be served electronically?

d. What improvements could be made to the online service list at fercdocket.ferc.fed.us/pa/pa.htm?

III. Procedure for Comments

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position on the issues raised in the Notice of Inquiry. To facilitate the Commission's review of the comments, commenters are requested to identify each specific question posed by the NOI that their discussion addresses and to use appropriate headings. Additional issues the commenters wish to raise should be identified separately. The commenters should double space their comments.

Comments may be filed on paper or electronically via the Internet and must be received by the Commission by November 2, 2001. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 and should refer to Docket No. RM01–11–000.

Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on ''E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments.

User assistance for electronic filing is available at 202–208–0258 or by E-Mail to *efiling@ferc.fed.us.* Comments should not be submitted to the E-Mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through The Commission's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

IV. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's website *(http://www.ferc.gov)* and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From the Commission's website on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from the Commission's website using the RIMS link. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us)* or the Public Reference Room at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us).*

[7] 18 CFR 385.2010(f)(3) (2001).

During normal business hours, documents can also be viewed and/or printed in the Commission's Public Reference Room, where RIMS, CIPS, and the Commission's website are available. User assistance is also available.

By direction of the Commission.

David P. Boergers,

Secretary.

[FR Doc. 01–24801 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK32

Medical Benefits Package; Copayments for Extended Care Services

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: We propose to amend VA's medical regulations by adding the following extended care services to the medical benefits package: noninstitutional adult day health care, noninstitutional geriatric evaluation, and noninstitutional respite care. Also, we propose to amend VA's medical regulations to establish provisions regarding copayments for extended care services. These actions would implement provisions of the Veterans Millennium Health Care and Benefits Act.

DATES: Comments must be received on or before December 3, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK32.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Marsha Goodwin, Geriatrics and Extended Care (114), at (202) 273–8540 for issues regarding the medical benefits package, and Nancy Howard, Revenue Office (174), at (202) 273–8198 for issues regarding copayments for extended care services. Both are officials in the Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION:

Medical Benefits Package

We propose to amend VA's medical regulations at 38 CFR 17.38 concerning VA's medical benefits package which sets forth what care is provided to veterans enrolled in the VA healthcare system. More specifically, we propose to add the following extended care services to the medical benefits package: noninstitutional adult day health care, noninstitutional geriatric evaluation, and noninstitutional respite care. This implements amendments to 38 U.S.C. 1701(10) and 1710B(a)(5) added by the Veterans Millennium Health Care and Benefits Act (section 101(b) and (c) of Public Law 106–117).

The medical benefits package already specifically includes respite care that is provided as hospital or outpatient care. To avoid confusion, we note that with the adoption of the proposed changes, the medical benefits package would include both institutional (hospital and outpatient) and noninstitutional respite care.

Copayments for Extended Care Services

The Veterans Millennium Health Care and Benefits Act (Pub. L. 106–117) also established provisions regarding copayments for extended care services provided to veterans by VA. These provisions are set forth at 38 U.S.C. 1710B. This document proposes to establish requirements at 38 CFR 17.111 regarding copayments for such extended care services provided either directly by VA or obtained by contract.

The proposed rule states that, with certain exceptions, as a condition of receiving extended care services, a veteran must agree to pay VA a copayment. This restates statutory provisions at 38 U.S.C. 1710B.

The proposed rule sets forth a mechanism for calculating the copayment amount. This is intended to implement the following statutory criteria set forth at 38 U.S.C. 1710B(d)(2) that states:

> The Secretary shall develop a methodology for establishing the amount of the copayment for which a veteran [receiving extended care services] is liable. That methodology shall provide for:
>
> (A) Establishing a maximum monthly copayment (based on all income and assets of the veteran and the spouse of such veteran);
>
> (B) Protecting the spouse of a veteran from financial hardship by not counting all of the income and assets of the veteran and spouse (in the case of a spouse who resides in the community) as available for determining the copayment obligation; and
>
> (C) Allowing the veteran to retain a monthly personal allowance.

The proposed rule states that a veteran has no copayment obligation for the first 21 days of extended care services in any 12-month period from the date extended care services began. It further states that for each day that extended care services are provided beyond the first 21 days, unless an exemption applies, a veteran is obligated to pay VA a copayment amount for each day that extended care services are provided to the extent the veteran has available resources. This reflects statutory provisions at 38 U.S.C. 1710B.

The proposed rule provides that the following extended care services are subject to the corresponding copayment amount per day:

(i) Adult day health care—$15.
(ii) Domiciliary care—$5.
(iii) Institutional respite care—$97.
(iv) Institutional geriatric evaluation—$97.
(v) Non-institutional geriatric evaluation—$15.
(vi) Non-institutional respite care—$15.
(vii) Nursing home care—$97.

The proposed copayment amount for institutional extended care is comparable to the copayment amount for nursing home services under the Medicare program and copayments at State homes that provide similar services. The proposed copayment amount for outpatient care is comparable to industry standards.

The proposed copayment amount for domiciliary care is lower, in part, because of the lower level of care provided. Further, although Public Law 106–117 included domiciliary care in the extended care service package, the eligibility criteria for this level of medical care did not change. To be eligible for domiciliary care, veterans must have a very low income, usually an amount that does not exceed the maximum annual rate of VA pension that would be applicable to the veteran if the veteran were eligible for VA pension based on the need for regular aid and attendance. Accordingly, we believe it is appropriate for the copayment amount to be low.

Under the proposal, a veteran would be obligated to pay the copayment only to the extent the veteran and the veteran's spouse have available resources. Available resources would mean the sum of the value of the liquid assets, fixed assets, and income of the veteran and the veteran's spouse minus the sum of the veteran allowance and

the spousal allowance. Liquid assets and fixed assets are included in the calculations only if the veteran has been receiving extended care services for 181 days or more. Expenses are included in the veterans allowance calculations only if the veteran has been receiving extended care services for 180 days or less, the veteran is receiving only adult day health care or other noninstitutional care, or the veteran has a spouse or dependents residing in the community (not institutionalized). This formula is designed to allow the veteran and the veteran's spouse and dependents to have minimum amenities while allowing the retention of some of their possessions to help them maintain, to a degree, a similar standard of living as they had in the past. Also, this formula is intended to help ensure that veterans institutionalized for 180 days or less would have the means to return home.

The proposed rule states that, for purposes of counting the number of days for which a veteran is obligated to make a copayment, VA would count each day that outpatient services are provided and would count each full day and partial day for each inpatient stay except for the day of discharge. This formula is not only administratively feasible, but it appears to be a fair and reasonable method for counting days for charging copayments.

The proposed rule sets forth definitions of adult day health care, domiciliary care, extended care services, geriatric evaluation, institutional, noninstitutional, nursing home care, and respite care. These definitions reflect the common meaning of their terms in the context of extended care services.

The proposed rule provides that, unless exempted, a veteran must submit to a VA medical facility a completed VA Form 10–10EC and documentation requested by the form at the following times:

(i) At the time of initial request for an episode of extended care services.

(ii) At the time of request for extended care services after having a break in provision of extended care services for more than 30 days.

(iii) Each year at the time of submission to VA of VA Form 10–10EZ.

The proposed rule also states that when there are changes to the veteran's or spouse's situation that would change the copayment obligation (i.e., changes regarding fixed assets, liquid assets, expenses, income, or whether the veteran has a spouse or dependents residing in the community), the veteran must report those changes to a VA medical facility within 10 days of the change. Further, the proposed rule sets forth in full VA Form 10–10EC. These provisions appear to be adequate to allow VA to make the determinations required to be made under the proposed rule.

The proposed rule sets forth the following categories of veterans and care that would not be subject to the copayment requirements:

(1) A veteran with a compensable service-connected disability,

(2) A veteran whose annual income (determined under 38 U.S.C. 1503) is less than the amount in effect under 38 U.S.C. 1521(b),

(3) Care for a veteran's noncompensable zero percent service-connected disability,

(4) An episode of extended care services that began on or before November 30, 1999,

(5) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, or post-Persian Gulf War combat-exposed veterans,

(6) Care for treatment of sexual trauma as authorized under 38 U.S.C. 1720D, or

(7) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck.

The first four categories are specifically excluded from the copayment provisions by statute (38 U.S.C. 1710B). Also, VA can charge a copayment for extended care services only for care provided to nonservice-connected veterans (38 U.S.C. 1710B). Categories (5) through (7) reflect circumstances in which the extended cares services would be for other than a ''nonservice-connected disability.''

This regulation will use a means test income threshold equal to the amount of basic pension VA provides to a single veteran eligible for pension benefits. The threshold differs from other means-test income thresholds established by other statutory provisions that VA uses to determine whether a veteran must pay copayments for inpatient and outpatient care and for medications because this threshold is specifically established by law at 38 U.S.C. 1710B(c)(2)(A) as added by the Millennium Act. Additionally, the copayment amounts established under this rule differ from other copayment amounts that VA must charge for inpatient and outpatient care and for medications. The copayment amounts are different due to the statutory requirements set forth at 38 U.S.C. 1710B(d)(2).

Paperwork Reduction Act

Proposed 38 CFR 17.111(f) contains collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AK32.''

Title: Application for extended care services.

Summary of collection of information: In proposed § 17.111(f), VA requests information from veterans so that VA can determine the financial circumstances of veterans receiving extended care services.

Description of the need for information and proposed use of information: The information is necessary to determine the amount of copayment owed to VA by veterans receiving extended care services.

Description of likely respondents:

Estimated number of respondents: 8,600.

Estimated frequency of responses: 1.

Estimated total annual reporting and record keeping burden: 12,900 hours.

Estimated annual burden per collection: 90 minutes.

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

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

are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

OMB Review

This document has been reviewed by the Office of Management and Budget under Executive Order 12866. VA has not yet completed a cost estimate for this rule but expects it to be significantly less than $100 million per year. VA will present a cost estimate in the final rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64,009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: May 1, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

§ 17.36 [Amended]

2. Section 17.36 is amended by:

A. In paragraph (a)(1), removing ''VA hospital and outpatient care'' and adding, in its place, ''the ''medical benefits package'' set forth in § 17.38''.

B. In paragraphs (a)(2) and (a)(3), removing ''hospital and outpatient''.

C. In paragraph (b)(3), removing ''hospital and outpatient'' and adding, in its place, ''that''.

§ 17.37 [Amended]

3. Section 17.37 is amended by:

A. In paragraphs (a), (b), (c), (e), (g), (h), and (i), removing ''hospital and outpatient''.

B. In paragraph (f), removing ''VA hospital and outpatient care'' and adding, in its place, ''care provided for in the ''medical benefits package' ''.

4. Section 17.38 is amended by:

A. Revising paragraph (a) introductory text.

B. Revising paragraph (a)(1)(xi).

C. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 17.38 Medical benefits package.

(a) Subject to paragraphs (b) and (c) of this section, the following hospital, outpatient, and extended care services constitute the ''medical benefits package'' (basic care and preventive care):

(1) * * *

(xi)(A) Hospice care, palliative care, and institutional respite care; and

(B) Noninstitutional geriatric evaluation, noninstitutional adult day health care, and noninstitutional respite care.

* * * * *

(Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722)

§§ 17.112 through 17.115 including undesignated center heading [Redesignated as §§ 17.113 through 17.116]

5.–6. Sections 17.112 through 17.115 including the undesignated center heading ''REIMBURSEMENT FOR LOSS BY NATURAL DISASTER OF PERSONAL EFFECTS OF HOSPITALIZED OR NURSING HOME PATIENTS'' are redesignated as §§ 17.113 through 17.116, respectively.

§ 17.111 [Redesigned as § 17.112]

7. Section 17.111 is redesignated as § 17.112

8. A new § 17.111 is added preceding the undesignated center heading ''CEREMONIES'' to read as follows:

§ 17.111 Copayments for Extended care services.

(a) *General.* This section sets forth requirements regarding copayments for extended care services provided to veterans by VA (either directly by VA or paid for by VA).

(b) *Copayments.* (1) Unless exempted under paragraph (f) of this section, as a condition of receiving extended care services from VA, a veteran must agree to pay VA and is obligated to pay VA a copayment as specified by this section. A veteran has no obligation to pay a copayment for the first 21 days of extended care services that VA provided the veteran in any 12-month period (the 12-month period begins on the date that VA first provided extended care services to the veteran). However, for each day that extended care services are provided beyond the first 21 days, a veteran is obligated to pay VA the copayment amount set forth below to the extent the veteran has available resources as determined under paragraph (d) of this section. The following sets forth the extended care services provided by VA and the corresponding copayment amount per day:

(i) Adult day health care—$15.

(ii) Domiciliary care—$5.

(iii) Institutional respite care—$97.

(iv) Institutional geriatric evaluation—$97.

(v) Non-institutional geriatric evaluation—$15.

(vi) Non-institutional respite care—$15.

(vii) Nursing home care—$97.

(2) For purposes of counting the number of days for which a veteran is obligated to make a copayment under this section, VA will count each day that outpatient services are provided

and will count each full day and partial day for each inpatient stay except for the day of discharge.

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

(1) *Adult day health care* is a therapeutic outpatient care program that provides medical services, rehabilitation, therapeutic activities, socialization, nutrition and transportation services to disabled veterans in a congregate setting.

(2) *Domiciliary care* is defined in § 17.30(b).

(3) *Extended care services* means adult day health care, domiciliary care, institutional geriatric evaluation, noninstitutional geriatric evaluation, nursing home care, institutional respite care, and noninstitutional respite care.

(4) *Geriatric evaluation* is a specialized, diagnostic/consultative service provided by an interdisciplinary team that is for the purpose of providing a comprehensive assessment, care plan, and extended care service recommendations.

(5) *Institutional* means a setting in a hospital, domiciliary, or nursing home of overnight stays of one or more days.

(6) *Noninstitutional* means a service that does not include an overnight stay.

(7) *Nursing home care* means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require nursing care and related medical services, if such nursing care and medical services are prescribed by, or are performed under the general direction of, persons duly licensed to provide such care (nursing services must be provided 24 hours a day). Such term includes services furnished in skilled nursing care facilities. Such term excludes hospice care.

(8) *Respite care* means care which is of limited duration, is furnished on an intermittent basis to a veteran who is suffering from a chronic illness and who resides primarily at home, and is furnished for the purpose of helping the veteran to continue residing primarily at home. (Respite providers temporarily replace the caregivers to provide services ranging from supervision to skilled care needs.)

(d) *Effect of the veteran's financial resources on obligation to pay copayment.* (1) A veteran is obligated to pay the copayment to the extent the veteran and the veteran's spouse have available resources. For purposes of this section, available resources means the sum of the value of the liquid assets, the fixed assets, and the income of the veteran and the veteran's spouse, minus the sum of the veteran allowance, and the spousal allowance. Liquid assets and fixed assets are included in the calculations only if the veteran has been receiving extended care services for 181 days or more. Expenses are included in the veterans allowance calculations only if the veteran has been receiving extended care services for 180 days or less, the veteran is receiving only adult day health care or other noninstitutional care, or the veteran has a spouse or dependents residing in the community (not institutionalized).

(2) For purposes of determining available resources under this section:

(i) *Income* means current income, *e.g.,* gross income (including, but not limited to, wages and income from a business, bonuses, tips, severance pay, accrued benefits, cash gifts, inheritance amounts, interest income, standard dividend income from non tax deferred annuities, retirement income, pension income, unemployment payments, worker's compensation payments, black lung payments, tort settlement payments, social security payments, court mandated payments, payments from VA or any other Federal programs, and any other income). The amount of current income will be stated in frequency of receipt, *e.g.,* per week, per month.

(ii) *Expenses* means basic subsistence expenses, including current expenses for the following: Rent/mortgage for primary residence; vehicle payment for one vehicle; food for veteran, veteran's spouse, and veteran's dependents; education for veteran, veteran's spouse, and veteran's dependents; court-ordered payments of veteran or veteran's spouse (*e.g.,* alimony, child-support); and including the average monthly expenses during the past year for the following: Utilities and insurance for the primary residence; out-of-pocket medical care costs not otherwise covered by insurance and medical insurance for the veteran, veteran's spouse, and veteran's dependents; and taxes paid on income.

(iii) *Fixed Assets* means:

(A) Real property and other non-liquid assets; except that this does not include—

(*1*) Burial plots,

(*2*) A residence if the residence is:

(*i*) The primary residence of the veteran and the veteran is receiving only noninstitutional extended care service, or

(*ii*) The primary residence of the veteran's spouse or the veteran's dependents (if the veteran does not have a spouse) if the veteran is receiving institutional extended care service.

(*3*) A vehicle if the vehicle is:

(*i*) The vehicle of the veteran and the veteran is receiving only noninstitutional extended care service, or

(*ii*) The vehicle of the veteran's spouse or the veteran's dependents (if the veteran does not have a spouse) if the veteran is receiving institutional extended care service.

(iv) *Liquid assets* means cash, stocks, dividends received from IRA, 401K's and other tax deferred annuities, bonds, mutual funds, and retirement accounts (*e.g.,* IRA, 401Ks, annuities), household furniture, household goods, clothing, jewelry, personal items.

(v) *Spousal allowance* is an allowance of $20 per day that is included only if the spouse resides in a community (not institutionalized)).

(vi) *Veterans allowance* is an allowance of $20 per day and expenses.

(3) The maximum amount of a copayment for any month equals the copayment amount specified in paragraph (b)(1) of this section multiplied by the number of days in the month. The copayment for any month may be less than the amount specified in paragraph (b)(1) of this section only if the veteran provides information in accordance with this section to establish that the copayment should be reduced or eliminated.

(e) *Requirement to submit information.* (1) Unless exempted under paragraph (f) of this section, a veteran must submit to a VA medical facility a completed VA Form 10–10EC and documentation requested by the Form at the following times:

(i) At the time of initial request for an episode of extended care services.

(ii) At the time of request for extended care services after a break in provision of extended care services for more than 30 days, and

(iii) Each year at the time of submission to VA of VA Form 10–10EZ.

(2) When there are changes that might change the copayment obligation (i.e., changes regarding fixed assets, liquid assets, expenses, income, or whether the veteran has a spouse or dependents residing in the community), the veteran must report those changes to a VA medical facility within 10 days of the change.

(f) *Veterans and care that are not subject to the copayment requirements.* The following veterans and care are not subject to the copayment requirements of this section:

(1) A veteran with a compensable service-connected disability,

(2) A veteran whose annual income (determined under 38 U.S.C. 1503) is less than the amount in effect under 38 U.S.C. 1521(b),

(3) Care for a veteran's noncompensable zero percent service-connected disability,

(4) An episode of extended care services that began on or before November 30, 1999,

(5) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, or post-Persian Gulf War combat-exposed veterans,

(6) Care for treatment of sexual trauma as authorized under 38 U.S.C. 1720D, or

(7) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck.

(Authority: 38 U.S.C. 101(28), 501, 1701(7), 1710, 1720B, 1720D, 1722A)

(g) VA *Form 10–10EC*

BILLING CODE 8320–01–P

APPLICATION FOR EXTENDED CARE SERVICES

GENERAL INFORMATION

VETERAN'S NAME (Last, First, MI)	SOCIAL SECURITY NUMBER

ANSWER YES OR NO WHERE APPLICABLE (OTHERWISE PROVIDE THE REQUESTED INFORMATION)

ARE YOU ELIGIBLE FOR MEDICAID? ☐ YES ☐ NO	ARE YOU ENROLLED IN MEDICARE PART A (Hospital Insurance) ☐ YES ☐ NO	EFFECTIVE DATE (If "Yes")
ARE YOU ENROLLED IN MEDICARE PART B (Medical Insurance) ☐ YES ☐ NO	EFFECTIVE DATE (If "Yes")	MEDICARE CLAIM NUMBER (If applicable)

INSURANCE INFORMATION

ARE YOU COVERED BY HEALTH INSURANCE (including coverage through a spouse)? (If "YES", provide the following information for all insurance company(s) providing coverage to you.) ☐ YES ☐ NO

NAME OF INSURANCE COMPANY	ADDRESS OF INSURANCE COMPANY	PHONE NUMBER OF INSURANCE COMPANY	
NAME OF POLICY HOLDER	RELATIONSHIP OF POLICY HOLDER	POLICY NUMBER	GROUP NAME AND/OR NUMBER
NAME OF INSURANCE COMPANY	ADDRESS OF INSURANCE COMPANY	PHONE NUMBER OF INSURANCE COMPANY	
NAME OF POLICY HOLDER	RELATIONSHIP OF POLICY HOLDER	POLICY NUMBER	GROUP NAME AND/OR NUMBER
NAME OF INSURANCE COMPANY	ADDRESS OF INSURANCE COMPANY	PHONE NUMBER OF INSURANCE COMPANY	
NAME OF POLICY HOLDER	RELATIONSHIP OF POLICY HOLDER	POLICY NUMBER	GROUP NAME AND/OR NUMBER

SPOUSE/DEPENDENT INFORMATION

To be counted as a dependent (other than spouse) the individual must have been counted as a dependent on the previous year's federal income tax and will meet the IRS dependent requirements for the coming year.

SPOUSE'S NAME (Last, First, MI)		SPOUSE' SOCIAL SECURITY NUMBER
SPOUSE'S ADDRESS (Street, City, State, Zip Code)	TELEPHONE NUMBER	SPOUSE RESIDING IN THE COMMUNITY? ☐ YES ☐ NO
DEPENDENT'S NAME (Last, First, MI)	DEPENDENT'S DATE OF BIRTH	SPOUSE' SOCIAL SECURITY NUMBER
DEPENDENT'S ADDRESS *(If different than spouse)* (Street, City, State, Zip Code)	TELEPHONE NUMBER	DEPENDENT RESIDING IN THE COMMUNITY? ☐ YES ☐ NO
DEPENDENT'S NAME (Last, First, MI)	DEPENDENT'S DATE OF BIRTH	DEPENDENT SOCIAL SECURITY NUMBER
DEPENDENT'S ADDRESS *(If different than spouse)* (Street, City, State, Zip Code)	TELEPHONE NUMBER	DEPENDENT RESIDING IN THE COMMUNITY? ☐ YES ☐ NO
DEPENDENT'S NAME (Last, First, MI)	DEPENDENT'S DATE OF BIRTH	DEPENDENT SOCIAL SECURITY NUMBER
DEPENDENT'S ADDRESS *(If different than spouse)* (Street, City, State, Zip Code)	TELEPHONE NUMBER	DEPENDENT RESIDING IN THE COMMUNITY? ☐ YES ☐ NO

We need to collect information regarding income, assets and expenses for you and your spouse. If you do not wish to provide this information you must sign agreeing to make copayments and will be charged the maximum copayment amount for all services. See the last page, read, sign and date.

VA FORM DEC 2000 **10-10EC**

FIXED ASSETS (VETERAN AND SPOUSE)	VALUE
1. Residence *(Market value minus any outstanding mortgage or lien - exclude if veteran receiving on non-institutional services or spouse or dependent residing in community).*	$
2. Other Residence (S) *(Market value of 2nd home, vacation residence, rental property etc., minus any outstanding mortgage or lien)*	$
3. Land *(Market value minus any outstanding mortgage or lien-if not included in value of residence*	$
4. Vehicle(s)* *(Exclude vehicle if veteran receiving only non-institutional services or spouse or dependent residing in community). *(Value minus any outstanding lien.)*	$
5. Farm and/or Ranch *(Market value minus any outstanding mortgage or lien)*	$
6. Other Fixed Assets *(Includes such items as stamp or coin collections, art work, collectibles minus amount owed; excludes burial plots, household furniture and other household goods, clothing, jewelry and personal items).*	$
	$

LIQUID ASSETS (VETERAN AND SPOUSE)	VALUE
1. Cash Balances *(Checking, savings, money market, etc.)*	$
2. Stocks, Mutual Funds, Bonds *(include 401k's, IRA's, Annuities)*	$
3. SEP'S *(Self-employed person)*	$
	$
SUM OF ALL LINES FIXED AND LIQUID ASSETS **TOTAL ASSETS**	$

CATEGORY	VETERAN		SPOUSE	
	HOW MUCH	HOW OFTEN	HOW MUCH	HOW OFTEN
Gross income, including wages, cash gifts, bonuses and tips, severance pay, or other accrued benefits (including gross income from your farm, ranch, property or business.)	$		$	
Social Security Retirement/Disability	$		$	
Interest/Dividends, including tax exempt earnings	$		$	
Retirement and Pension income	$		$	
Civil Service Retirement	$		$	
U.S. Railroad Retirement	$		$	
VA Pension	$		$	
Spouse VA disability/compensation	$		$	
Unemployment Benefits/Compensation	$		$	
Other compensation, e.g. Workers Compensation and Black Lung	$		$	
Military Retirement	$		$	
Other Retirement	$		$	
Court Mandated *(e.g. alimony, child support) (Veteran and spouse)*	$		$	
Other Income	$		$	

EXPENSES	
ITEMS	AMOUNT
Education (veteran, spouse or dependent)	$
Funeral and Burial	$
Rent/Mortgage (Principle Residence only)	$
Utilities	$
Car Payment	$
Food	$
Non-reimbursed medical expenses	$
Court-ordered payments	$
Insurance (exclude life insurance)	$
Taxes (on any amount include in gross income)	$
Taxes (Property, personal)	$

CONSENT TO RELEASE INFORMATION

I hereby authorize the department of Veterans Affairs to disclose any such history, diagnostic and treatment information from my medical records (including information relating to the diagnosis, treatment of other therapy for the conditions of substance abuse, alcoholism or alcohol abuse, sickle cell anemia, or treating for or infection with the human immunodeficiency virus) to the contractor of any health plan contract under which I am apparently eligible for medical care or payment of the expense of care or to any other party against whom liability is asserted. I understand that I may revoke this authorization at any time, except to the extent that action has already been taken in reliance on it. Without my express revocation, this consent will automatically expire when all action arising from VA's claim for reimbursement for my medical care has been completed. I authorize payment of medical benefits to VA for any services for which payment is accepted.

SIGNATURE	DATE

CONSENT AND AGREEMENT TO MAKE COPAYMENTS

Completion of this form with signature of the Veteran or veteran's representative is certification that the veteran/representative has received a copy of the Privacy Act Statement and agrees to make appropriate copayments.

I certify the foregoing statement(s) are true and correct to the best of my knowledge and belief and agree to make the applicable copayment for extended care services as required by law.

SIGNATURE	DATE

OR

I do not wish to provide my detailed financial information. I understand that I will be assessed the maximum copayment amount for extended care services and agree to pay the applicable VA copayment as required by law.

SIGNATURE	DATE

(Authority: 38 U.S.C. 501, 1710B)

[FR Doc. 01–24762 Filed 10–3–01; 8:45 am]

BILLING CODE 8320–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2207; MM Docket No. 01–249; RM–10272]

Radio Broadcasting Services; Telluride and Norwood, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Rocky III Investments, Inc., licensee of Station KRYD(FM), Channel 285C1, Telluride, Colorado, requesting the reallotment of Channel 285C1 to Norwood, Colorado, as that community's first local aural transmission service, and modification of its license accordingly. The petitioner's modification proposal complies with the provisions of Section 1.420(i) of the Commission's Rules and therefore, we will not be accepting competing expressions of interest in the use of Channel 285C1 at Norwood. Coordinates used for this proposal are 38–00–05 NL and 107–57–53 WL.

DATES: Comments must be filed on or before November 13, 2001, and reply comments on or before November 27, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry D. Wood and Stuart W. Nolan, Jr., Esqs., Wood, Maines & Brown, Chartered, 1827 Jefferson Place, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–249, adopted September 12, 2001, and released September 21, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Norwood, Channel 285C1, and removing Telluride, Channel 285C1.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–24862 Filed 10–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2210; MM Docket No. 01–250, RM–10273; MM Docket No. 01–251, RM–10274; MM Docket No. 01–252, RM–10275; MM Docket No. 01–253, RM–10276]

Radio Broadcasting Services: Cheyenne Wells, CO; Flagler, CO; Moberly, MO; Stratton, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes new allotments to Cheyenne Wells, CO; Flagler, CO; Moberly, MO; and Stratton, CO. The Commission requests comments on a petition filed on behalf of Cheyenne Wells Broadcasting proposing the allotment of Channel 224C1 at Cheyenne Wells, Colorado, as the community's first local aural transmission service. Channel 224C1 can be allotted to Cheyenne Wells in compliance with the Commission's minimum distance separation requirements without any site restriction. The coordinates for Channel 224C1 at Cheyenne Wells are 38–49–16 North Latitude and 102–21–09 West Longitude. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before November 13, 2001, and reply comments on or before November 27, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: A. Wray Fitch, III, Gammon & Grange, P.C.; 8280 Greensboro Drive, 7th Floor; McLean, Virginia 22102–3807 (Counsel for petitioners for Cheyenne Wells, Colorado; Flagler, Colorado and Stratton, Colorado); and Charles Crawford; 4553 Bordeaux Ave; Dallas, Texas 75205 (Petitioner for Moberly, Missouri.).

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–250; MM Docket No. 01–251; MM Docket No. 01–252; and MM Docket No. 01–253, adopted September 12, 2001, and released September 21, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

The Commission requests comments on a petition filed on behalf of Flagler Broadcasting proposing the allotment of Channel 283C3 at Flagler, Colorado, as the community's first local aural transmission service. Channel 283C3 can be allotted to Flagler in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4.1 miles) west of Flagler. The coordinates for Channel 283C3 at Flagler are 39–17–17 North Latitude and 103–08–32 West Longitude.

The Commission requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 223A at Moberly, Missouri, as that community's fifth local aural FM transmission service. Channel 223A can be allotted to Moberly in compliance with the Commission's minimum distance separation requirements at the city reference coordinates with no site restriction. The coordinates for Channel 223A at Moberly are 39–25–06 North Latitude and 92–26–17 West Longitude.

The Commission requests comments on a petition filed on behalf of Stratton Broadcasting proposing the allotment of Channel 246C1 at Stratton, Colorado, as that community's first local aural transmission service. Channel 246C1 can be allotted to Stratton in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) east of Stratton. The coordinates for Channel 246C1 at Stratton are 39–18–34 North Latitude and 102–33–17 West Longitude.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1.The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Cheyenne Wells, Channel 224C1; Flagler, Channel 283C3; and Stratton, Channel 246C1.

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel 223A at Moberly.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–24863 Filed 10–3–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 66, No. 193

Thursday, October 4, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of the information collection and supporting documents may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–.

Form Number: AID 1558–3.

Title: Financial Report of All Expenditures (FRAE).

Type of Submission: New Information Collection.

Purpose: The purpose of this information collection is to collect data on liquidated cost sharing funds on a quarterly basis and to assure that recipients abide by agreed conditions of the award. This collection is needed to assure that grant recipients participate in negotiated USAID/BHR/ASHA grant financed projects by providing additional funds from sources other than U.S. federal monies.

Annual Reporting Burden

Respondents: 196.

Total annual responses: 380.

Total annual hours requested: 380 hours.

Dated: September 26, 2001.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 01–24789 Filed 10–3–01; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–072–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the export of poultry and poultry hatching eggs from the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by December 3, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–072–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 01–072–1.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding certificates for exporting poultry and hatching eggs, contact Dr. Ted Williams, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1236, (301) 734–8364. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION: *Title:* Certificate for Poultry and Hatching Eggs for Export.

OMB Number: 0579–0048.

Type of Request: Extension of approval of an information collection.

Abstract: The export of agricultural commodities, including poultry and hatching eggs, is a major business in the United States and contributes to a favorable balance of trade. In accordance with 21 U.S.C. 112 and 113, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), collects information and conducts inspections to ensure that poultry and hatching eggs exported from the United States are free of communicable diseases. Receiving countries have specific health requirements for poultry and hatching eggs exported from the United States. Most countries require a certification that our poultry and hatching eggs are free of diseases of concern to the receiving country. This certification generally must carry the USDA seal and be endorsed by an APHIS veterinarian. VS Form 17–6, Certificate for Poultry and Hatching Eggs for Export, is generally used to meet these requirements.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the

Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Owners of poultry and hatching egg operations, and exporters of these products.

Estimated annual number of respondents: 300.

Estimated annual number of responses per respondent: 70.

Estimated annual number of responses: 21,000.

Estimated total annual burden on respondents: 10,500 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of September 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–24883 Filed 10–3–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–084–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Pseudorabies Eradication Program.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by December 3, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–084–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–084–1.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding the Pseudorabies Eradication Program, contact Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737, (301) 734–7708. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Pseudorabies.

OMB Number: 0579–0070.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for preventing the spread of contagious, infectious, or communicable animal diseases from one State to another, and for eradicating such diseases from the United States when feasible.

In connection with this mission, APHIS regulates the interstate movement of swine in order to carefully control the movement of swine that are infected with or exposed to pseudorabies. These regulations are found in 9 CFR part 85. The most common method of pseudorabies transmission is through the movement of infected swine from one herd to another.

Regulating the interstate movement of these animals requires the use of certain information collection activities, including the completion of documents attesting to the health status of the swine being moved, the number of swine being moved in a particular shipment, the shipment's point of origin, and the shipment's destination.

With this information, we are able to carefully monitor the location of infected or exposed animals and prevent them from coming into contact with healthy animals.

These documents also provide useful ''traceback'' information in the event an infected animal is discovered and an investigation must be launched to determine where the animal originated, as well as the number and location of other animals with which it may have had contact during its interstate movement.

The information provided by these documents is critical to our ability to prevent the interstate spread of pseudorabies, and therefore plays a vital role in our Pseudorabies Eradication Program.

We are asking the Office of Management and Budget (OMB) to approve the use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.02076 hours per response.

Respondents: Swine shippers, swine herd owners, and State animal health protection authorities.

Estimated annual number of respondents: 30,050.

Estimated annual number of responses per respondent: 2.66888.

Estimated annual number of responses: 80,200.

Estimated total annual burden on respondents: 1,665 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of September 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–24884 Filed 10–3–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (SAC PAC); Klamath Provincial Advisory Committee (Klamath PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (NW SACPAC) and the Klamath Provincial Advisory Committee (Klamath PAC) will hold a joint meeting on Thursday, October 25, 2001, in Redding, California. The Klamath PAC members will continue meeting through Friday, October 26. The purpose of the meeting is to discuss Northwest Forest Plan implementation issues.

DATES: The meeting will be held October 25–26, 2001.

LOCATION: The meeting will be held in the Banquet Room of the C.R. Gibbs Restaurant at 2300 Hilltop Drive in Redding, CA.

FOR FURTHER INFORMATION CONTACT: Jackie Riley, Committee Corodinator, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA 96001, (530) 242–2203; e-mail: *jriley01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: September 25, 2001.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 01–24777 Filed 10–3–01; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on October 17, 2001 at the Hawthorn Inn and Suites, 243 NE Morgan Lane, at Grants Pass, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) Province Advisory Committee Operating Guidelines; (2) Public Comment; (3) Discussion of Work Plans for fiscal year 2002; and (4) Current issues as perceived by Advisory Committee members.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Evenson, Province Advisory Committee Coordinator, USDA, Forest Service, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3344.

Dated: September 28, 2001.

Michael D. Hupp,

Acting Designated Federal Official.

[FR Doc. 01–24870 Filed 10–3–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades Provincial Interagency Executive Committee Advisory Committee (Provincial Advisory Committee) will meet on Tuesday, October 23rd, 2001, at the Mt. Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, WA.

The meeting will begin at 9 a.m. and continue until about 3 p.m. Agenda items to be covered include: (1) Review and feedback regarding key elements to be included in the Adaptive Management Area Plan for the Finney, (2) updates regarding current Forest Service initiatives, (3) review and feedback regarding vegetation management plans on the Forest, and (4) review and discussion of study results from the Forest Ecologist. All Western Washington Cascades Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The Provincial Advisory Committee provides advice regarding ecosystem management for federal lands within the Western Washington Cascades Province, as well as advice and recommendations to promote better integration of forest management activities among federal and non-federal entities. The Advisory Committee is a key element of implementation of the Northwest Forest Plan.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Province Liaison, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro-Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: September 27, 2001.

Ronald R. DeHart,

Designated Federal Official.

[FR Doc. 01–24871 Filed 10–3–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA Forest Service.

ACTION: Action of Meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Thursday, October 17, 2001. The meeting is scheduled to begin at 9 a.m., and will conclude at approximately 2 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management; 1717 Fabry Road SE, Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Overview of monitoring results, (2) Subcommittee organization, (3) Public forum, (4) Update and information sharing.

The Public Forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be

submitted prior to the October 17 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: September 28, 2001.

Herbert L. Wick,

Acting Forest Supervisor.

[FR Doc. 01–24877 Filed 10–3–01; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, October 12, 2001, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda

II. Approval of Minutes of September 14, 2001 Meeting

III. Announcements

IV. Staff Director's Report

V. State Advisory Committee Appointments for Alaska, Delaware, Maine, Michigan, Missouri, Montana, Nevada, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Washington, Wisconsin, and Wyoming

VI. Future Agenda Items

Briefing on Boundaries of Justice: Immigration Policies Post September 11th

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Les Jin,

Staff Director.

[FR Doc. 01–25079 Filed 10–2–01; 3:27 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–2000]

Foreign-Trade Zone 93—Raleigh/Durham, NC; Withdrawal of Application for Subzone Status for Pergo, Inc., Laminate-Particle Board Flooring Plant

Notice is hereby given of the withdrawal of the application submitted by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the laminate-particle board flooring products manufacturing facility of Pergo, Inc., located in Garner, North Carolina. The application was filed on June 5, 2000.

The withdrawal was requested because of changed circumstances, and the case has been closed without prejudice.

Dated: September 26, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–24925 Filed 10–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Notice of Postponement of Final Determination of Antidumping Duty Investigation: Automotive Replacement Glass Windshields From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final determination of antidumping duty investigation.

EFFECTIVE DATE: October 4, 2001.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Stephen Bailey, Office IX, DAS Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0182 and (202) 482–1102, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Background

This investigation was initiated on March 20, 2001. *See Notice of Initiation of Antidumping Duty Investigation: Certain Automotive Replacement Glass Windshields from the People's Republic of China,* 66 FR 16651 (March 27, 2001) (*''Notice of Initiation''*). The period of investigation (POI) is July 1, 2000 through December 31, 2000. On September 19, 2001, the Department published the notice of preliminary determination. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China,* 66 FR 48233 (September 19, 2001).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by exporters for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On September 14, 2001, exporters Shenzhen Benxum Auto-Glass Co., Ltd. (''Benxun''), Xinyi Automotive Glass (Shenzhen) Co., Ltd. (''Xinyi'') and TCG International Inc. (''TCGI'') requested a 60-day extension from the date of the publication of the preliminary determination in the **Federal Register** for the Department's final determination, pursuant to 19 CFR 351.210(b)(2)(ii). On September 20, 2001, exporter Fuyao Glass Industry Group Co., Ltd. (''FYG'') also requested that the Department postpone its final determination for 60 days, pursuant to 19 CFR 351.210(b)(2)(ii), and agreed to an extension of provisional measures.

In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the exporters above account for a significant proportion of exports of the subject

merchandise, and (3) no compelling reasons for denial exist, we are granting the postponement requests and are postponing the final determination until no later than 135 days after the publication of preliminary determination in the **Federal Register**. We are also extending the provisional measures, from four months to six months, in accordance with 19 CFR 351.210(e)(2). Therefore, the final determination would now be due on February 1, 2002. Suspension of liquidation will be extended accordingly.

This notice is published in accordance with section 735(a)(2) of the Act.

Dated: September 26, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–24924 Filed 10–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Notice of Postponement of Preliminary Antidumping Duty Determination: Folding Metal Tables and Chairs From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 4, 2001.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Steve Bezirganian at (202) 482–0405 and (202) 482–1131, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Postponement of Preliminary Determinations

The Department of Commerce (the Department) is postponing the preliminary determination in the antidumping duty investigation of Folding Metal Tables and Chairs from the People's Republic of China. The deadline for issuing the preliminary determination in this investigation is now November 5, 2001.

On May 24, 2001, the Department initiated an antidumping investigation of Folding Metal Tables and Chairs from the People's Republic of China. *See* Initiation of Antidumping Duty Investigation: Folding Metal Tables and Chairs from the People's Republic of China, 66 FR 28728. The notice stated that the Department would issue its preliminary determination no later than 140 days after the date of initiation (*i.e.,* October 4, 2001).

On September 5, 2001, the petitioner, Meco Corporation, requested a thirty-day postponement of the preliminary determination, in accordance with section 351.205(e) of the Department's regulations, to allow sufficient time to submit comments on the respondents' questionnaire responses and for the Department to analyze the respondents' data and issue supplemental questionnaires. Therefore, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended, and section 351.205(e) of the regulations, and absent any compelling reason to deny the request, the Department is postponing the deadline for issuing this determination 30 days (*i.e.,* until November 5, 2001).

Dated: September 25, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–24926 Filed 10–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: October 4, 2001.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza (Inner Mongolia and Zhejiang) at (202) 482–3019, Fred Baker (Kunshan) at (202) 482–2924, Charles Rast at (202) 482–1324 or Donna Kinsella at (202) 482–0194; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations codified at 19 CFR part 351 (April 2000).

Final Determination

We determine that honey from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on May 11, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China,* 66 FR 24101 (May 11, 2001) (*Preliminary Determination*). Since publication of the preliminary determination, the following events have occurred.

On May 14, 2001, the producers/exporters of subject merchandise from the PRC requested that the Department postpone its final determination to the fullest extent permitted by the statute and the Department's regulations. Additionally, the PRC producers/exporters consented to an extension of the period for the imposition of provisional measures to the fullest extent permitted, or six months, whichever is later. On June 6, 2001, we published in the **Federal Register** a notice of postponement of the final determination and extension of provisional measures in this investigation. *See Notice of Postponement of Final Determinations of Sales at Less Than Fair Value: Honey from Argentina and the People's Republic of China and Postponement of Final Countervailing Duty Determination: Honey from Argentina,* 66 FR 30413–02 (June 6, 2001).

On May 18, 2001, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) submitted comments alleging certain ministerial errors in the Department's preliminary determination. On May 21, 2001, respondents submitted comments regarding certain alleged ministerial errors in petitioners' May 18, 2001, proposed corrections to the *Preliminary Determination.* Petitioners commented on respondents' submission on May 23, 2001. On August 2, 2001, we published in the **Federal Register** an amended preliminary determination in this investigation. *See Notice of Amended Preliminary Determination of Sales at*

Less Than Fair Value: Honey from the People's Republic of China, 66 FR 40191–01 (August 2, 2001).

The Department conducted verification at The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Produce and Animal By-Products (the Chamber) from May 28, 2001 through May 29, 2001 in Beijing, PRC. *See* ''Verification Meeting at MOFTEC and the Chamber in the Antidumping Duty Investigation of Honey from the PRC,'' July 27, 2001. The Department also conducted verification of information submitted by Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import and Export Corporation (Inner Mongolia), Kunshan Foreign Trading Company (Kunshan), and Zhejiang Native Produce and Animal By-Products Import and Export Corporation (Zhejiang) from May 30, 2001 through June 9, 2001, at each respondent's respective administrative headquarters and suppliers' facilities in the PRC. *See* Memorandum For the File; ''Verification of U.S. Sales and Factors of Production—Inner Mongolia and its affiliated processing factory Inner Mongolia Sheng Li Food Company (Sheng Li);'' ''Verification of U.S. Sales and Factors of Production—Zhejiang and Hangzhou Green Forever Apiculture (Group) Co. (Hangzhou);'' and, ''Verification of U.S. Sales and Factors of Production—Kunshan and Kunshan Xinlong Food Co. Ltd. (Xinlong),'' July 27, 2001 (collectively, Sales Verification Reports). Public versions of these, and all other Departmental memoranda referred to herein, are on file in the Central Records Unit, room B–099 of the main Commerce building.

On June 7, 2001, petitioners requested a public hearing. Respondents requested a public hearing on June 11, 2001.

On July 3, 2001, petitioners and respondents submitted additional publicly available information to value the factors of production for honey exported from the PRC.

On July 3, 2001, petitioners requested that the Department solicit updated, exporter-specific information for purposes of determining critical circumstances for Inner Mongolia, Kunshan, Shanghai Eswell, Anhui, and Henan. Respondents commented on petitioners' submission on July 12, 2001. Petitioners filed additional comments on July 13, 2001 and August 1, 2001. Respondents filed additional comments on July 17, 2001. On August 9, 2001, we requested additional shipment information from respondents and from cooperative exporters with respect to their exports of honey to the United States. Parties submitted the requested information on August 24, 2001.

On August 8, 2001, petitioners and respondents (Inner Mongolia, Kunshan, and Zhejiang) filed case briefs. We received rebuttal briefs from all parties on August 14, 2001. A public hearing in this investigation was held on August 27, 2001.

Although the deadline for this determination was originally September 24, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the timeframe for issuing this determination has been extended by two days.

Period of Investigation

The period of investigation (POI) is January 1, 2000 through June 30, 2000.

Non-Market Economy

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. *See Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the PRC,* 65 FR 33805 (May 25, 2000), and *Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the PRC,* 66 FR 33522 (June 22, 2001). A designation as an NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, see the Department's *Preliminary Determination.*

Separate Rates

In our *Preliminary Determination,* we found that Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan had met the criteria for the application of separate antidumping duty rates. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separate rates determination with respect to the above-listed entities. Therefore, we continue to find that Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan should be assigned individual dumping margins. For a complete discussion of the Department's determination that the respondents are entitled to separate rates, see the *Preliminary Determination.*

Margins for Cooperative Exporters Not Selected

On December 19, 2000, the Department determined to examine a limited number of respondents. In its memo limiting the number of respondents, the Department selected Inner Mongolia, Kunshan, and Zhejiang as mandatory respondents. High Hope, Shanghai Eswell, Anhui, and Henan cooperated in the investigation, filed separate rates information and were determined to meet the criteria for separate rates. *See* Memorandum to the File from Richard Weible to Joseph A. Spetrini; Selection of Respondents dated December 19, 2000. For the reasons set forth in the *Preliminary Determination,* we have continued to calculate a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation for High Hope, Shanghai Eswell, Anhui, and Henan. Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice.

Use of Facts Available

In the *Preliminary Determination,* the Department determined that the application of total adverse facts available (AFA) was appropriate with respect to the PRC-wide entity, as this entity failed to respond to the Department's antidumping questionnaire. As AFA, the Department applied a margin rate of 183.80 percent, the highest margin alleged in the petition and which the Department was able to corroborate. *See* Memorandum to the File from Donna L. Kinsella; The Use of Facts Available for the PRC-wide entity and Corroboration of Secondary Information dated May 4, 2001. The interested parties did not object to the use of AFA for the PRC-wide entity, or to the Department's choice of facts available, and no new facts were submitted which would cause the Department to revisit this decision. Therefore, for the reasons set out in the preliminary determination, we have continued to use the highest margin alleged in the petition for the purposes of this final determination notice.]

Surrogate Country

For purposes of the final determination, we find that India remains the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see the Department's *Preliminary Determination.*

Critical Circumstances

We determine that critical circumstances exist for imports of honey from High Hope, Kunshan, Zhejiang, and the PRC-wide entity, in accordance with section 735(a)(3) of the Act. Because we did not find that massive imports, within the meaning of 19 CFR 351.206(h), exist for imports from Inner Mongolia, Shanghai Eswell, Anhui, and Henan, we determine that critical circumstances do not exist for imports of honey exported by these entities. For further discussion of our determination and analysis of critical circumstances, *see* Memo to Richard Weible regarding Final Affirmative and Negative Determinations of Critical Circumstances, September 26, 2001 and Comment 2 of the Decision Memorandum, which is on file in room B–099 and available on the World Wide Web at *www.ia.ita.doc.gov/frn.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated September 26, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *www.ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

For purposes of this investigation, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this investigation is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the harmonized tariff schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the Department's written description of the merchandise under investigation is dispositive.

Changes Since the Preliminary Determination

Based on our analysis of comments received and findings at verification, we have made the following changes in the margin calculations: (1) Based factory overhead, selling and general administrative expenses, and profit ratios on the adjusted 1999–2000 financial statements of the Mahabaleshwar Honey Producers Cooperative Society, Ltd.; (2) valued scrap honey, a by-product offset, using an Indian surrogate value for inedible molasses; (3) valued energy inputs (*i.e.,* coal and electricity) using Indian surrogate values as reported by the International Energy Agency; (4) used Hangzhou's verified raw honey consumption in valuing raw honey; (5) used Hangzhou's and Sheng Li's verified water consumption in valuing water; (6) used Hangzhou's and Sheng Li's verified electricity consumption in valuing electricity; (7) revised our cost calculation for iron drums used to pack subject merchandise; (8) used the correct wholesale price index to value inland water transportation costs incurred by Kunshan; (9) deleted the adjustment to Inner Mongolia's freight rate for inflation, because the value is contemporaneous with the POI; (10) used Hubei Yangzijiang Apiculture Co. Ltd.''s (Hubei) correct by-product consumption figure; (11) valued water costs incurred by Hubei and Hangzhou; (12) deleted the adjustment to Zhejiang's and Inner Mongolia's labor rates for inflation; (13) used the corrected inland freight rates for Kunshan's shipments greater than 100 kilometers; (14) revised the calculation of weighted-average of Hubei's and Hangzhou's normal value; (15) revised the calculation of beeswax for Hubei and Hangzhou; and (16) used Xinlong's inland freight distance for drums and coal as verified. These changes are described in greater detail in various sections of the Decision Memorandum, accessible in room B–099 and on the Web at *www.ia.ita.doc.gov/frn.*

Suspension of Liquidation

In accordance with section 735(c)(4)(B) of the Act, for Zhejiang and Kunshan, the Department will direct the Customs Service to suspend liquidation of all unliquidated entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after February 10, 2001, the date 90 days prior to the date of publication of the *Preliminary Determination.* With respect to High Hope and the PRC-wide entity, in accordance with section 735(c)(4)(A) of the Act, the Department will instruct the Customs to continue to suspend liquidation of all entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after February 10, 2001. For the remaining companies (*i.e.,* Inner Mongolia, Shanghai Eswell, Anhui, and Henan), we are instructing Customs to continue to suspend liquidation of all entries of honey from the PRC that are entered, or withdrawn from warehouse, for consumption on or after May 11, 2001, the date of publication of the *Preliminary Determination.* The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following weighted-average dumping margins and critical circumstances exist for the period January 1, 2000 through June 30, 2000:

Exporter/manufacturer	Margin (percent)	Critical circumstances
Inner Mongolia	57.13	No.
Kunshan	49.75	Yes.
Zhejiang	25.88	Yes.
High Hope	45.51	Yes.
Shanghai Eswell.	45.51	No.
Anhui	45.51	No.
Henan	45.51	No.
PRC-wide Entity.	183.80	Yes.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. Because our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn

from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 26, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo

Comments and Responses

General Issues

1. Cooperation of PRC Producers/Exporters and Compliance Under the *Suspension Agreement*
2. Critical Circumstances
3. Factory Overhead, SG&A, and Profit
4. Surrogate Value for Raw Honey
5. Surrogate Value for Beeswax
6. Surrogate Value for Scrap Honey
7. Surrogate Value for Drums
8. Surrogate Value for Energy
9. Labor Hours

Company-Specific Issues

Zhejiang

10. Zhejiang Willing
11. Raw Honey
12. Water
13. Electricity

Inner Mongolia

14. Movement Expenses

Kunshan

15. Inland Insurance
16. Electricity

[FR Doc. 01–24921 Filed 10–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Notice of Final Determination of Sales at Less Than Fair Value; Honey From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: October 4, 2001.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge, Charles Rast, or Donna Kinsella at (202) 482–3518, (202) 482–1324, or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Final Determinations

We determine that honey from Argentina is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on May 11, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from Argentina*, 66 FR 24108 (May 11, 2000) (*Preliminary Determination*). Since the publication of the *Preliminary Determination* the following events have occurred.

On May 11, 2001, Asociacion Cooperativas Argentinas (ACA), one of the Argentine respondents, requested that the Department postpone its final determination to the fullest extent permitted by the statute and the Department's regulations. On May 29, 2001, the Department postponed the final determination until no later than 135 days after publication of the preliminary determination in the **Federal Register**. See 66 FR 30413 (June 6, 2001).

On May 11, 2001, one of the Argentine respondents, Radix S.R.L. (Radix), which withdrew from participation in the investigation on May 1, 2001, requested that the Department allow it to re-enter the investigation. In a letter of May 16, 2001, the petitioners objected to the request by Radix. On June 12, 2001, the Department notified Radix that it could re-enter the ongoing investigation.

Requests for a public hearing were received by the Department from petitioners on June 7, 2001, and from ACA on June 4, 2001.

On June 11, 2001 and June 18, 2001, respondents ACA and Radix submitted, respectively, additional factual information regarding the cost of production of honey in Argentina. On June 20, 2001, petitioners submitted a letter to the Department requesting that the cost information submitted by Radix be rejected for untimeliness. On June 21, 2001, petitioners submitted rebuttal factual information in response to the cost of production information submitted by ACA.

The Department verified sections A through C of ACA's responses from June 18 through June 22, 2001, at ACA's headquarters in Buenos Aires, Argentina. *See* Memorandum To The File; ''Verification of ACA's Questionnaire Responses'', July 27, 2001. The Department also verified sections A through C of responses received from Radix from June 25 through June 29, 2001, at Radix's headquarters in Buenos Aires, Argentina. *See* Memorandum To The File; ''Verification of Radix's Questionnaire Responses'', July 26, 2001. Public versions of these, and all other Departmental memoranda referred to herein, are on file in the Central Records Unit, room B–099 of the main Commerce building.

On August 6, 2001, ACA, Radix, and petitioners filed case briefs. Petitioners submitted objections on August 9, 2001, to ACA's proprietary treatment of certain information and submission of new factual information contained in ACA's brief. We received rebuttal briefs from all parties on August 13, 2001. On August 24, 2001, ACA re-submitted its case brief.

The Department issued a preliminary margin analysis for Radix on August 15, 2001. Comments from petitioners and Radix were received on August 22, 2001. Rebuttal comments were received on August 27, 2001. The public hearing in this proceeding was held on August 28, 2001. On September 4, 2001, ACA and Radix submitted information requested by the Department at the hearing. On September 18, 2001, ACA submitted additional information to clarify their September 4, 2001 response. On September 10, 2001, petitioners submitted comments on Radix's and ACA's responses to the Department's August 28, 2001 request for additional information.

On August 24, 2001, a proposed suspension agreement was initialed by the authorized legal representative of ACA, Radix, Con Agra Argentina S.A., Honey Max S.A., Nexco S.A., CIA Europea Americana S.A., Foodway S.A., CIA Inversora Platense S.A., Miel Ar, Trans Honey S.A., Miel Gibbons, Times S.A., and a representative of the U.S. Department of Commerce. Comments from interested parties were submitted on September 14, 2001. This proposed agreement has not been accepted.

Although the deadline for this determination was originally September 24, 2001, in light of the events of September 11, 2001, and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this determination has been extended by two days.

Period of Investigation

The period of investigation (POI) is July 1, 1999 through June 30, 2000.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated September 24, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at ia.ita.doc.gov/frn/frnhome. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

For purposes of these investigations, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to these investigations is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the Department's written description of the merchandise under investigation is dispositive.

Facts Available

Section 776(a) of the Act provides that ''if any interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' The statute also requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

As noted in the *Preliminary Determination*, ConAgra failed to respond to the Department's December 19, 2000, request for information. See 66 FR 24110 (June 6, 2001). Nor has ConAgra participated in the remainder of the investigation. Therefore, in this final determination, the Department will resort to the use of facts available for this respondent, in accordance with section 776(a)(2)(A) of the Act. Further, as we stated in the *Preliminary Determination*, section 782(d) and (e) are inapplicable in this instance because ConAgra failed to provide the requested information. *Id.* Moreover, we have determined that ConAgra's failure to respond to any portions of the Department's December 19, 2000, questionnaire demonstrates that the company has not cooperated to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we will apply an adverse inference in selecting a margin from among facts otherwise available. *See* Memorandum from Donna Kinsella to Richard O. Weible, Honey from Argentina: Final Determination of Sales at Less Than Fair Value—The Use of Facts Available for ConAgra Argentina, S.A., and the Corroboration of Secondary Information, dated May 4, 2001 (ConAgra Facts Available Memorandum).

For a further discussion of our application of facts available, see the ''Facts Available'' section of the Decision Memorandum, which is on file in B–099 and available on the Web at *ia.ita.doc.gov/frn/frnhome.*

Changes Since the Preliminary Determination

Based on our analysis of comments received and findings at verification, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any allegations of programming or clerical errors are discussed in the relevant sections of the ''Decision Memorandum,'' accessible in B–099 and on the Web at ia.ita.doc.gov/frn/.

Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the U.S. Customs Service (Customs) to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after May 11, 2001, the date of publication of the preliminary determination in the **Federal Register**.

Section 772(c)(1)(C) of the Act states that the price used to establish export price and constructed export price shall be increased by the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy and reduced by the amount, if included in such price, of any export duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty or other charge described in section 771(6)(C). Since antidumping duties cannot be assessed on the portion of the margin attributed to export subsidies there is no reason to

require a cash deposit or bond for that amount. *See e.g., Notice of Amended Final Determination of Sales at Less Than Fair Value; Structural Steel Beams from South Korea*, 65 FR 50502 (Aug. 18, 2001). The Department has determined in its Final Affirmative Countervailing Duty Determination: Honey From Argentina that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct Customs to require a cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below, minus the amount determined to constitute an export subsidy codified at 19 U.S.C. 736(a)(1) (2000). *See e.g., Notice of Antidumping Duty Order: Stainless Steel Wire Rod From Italy*, 63 FR 49327 (September 15, 1998). Accordingly, for cash deposit purposes we will subtract from ACA's and Radix's' cash deposit rate that portion of the rate attributable to the export subsidies found in the countervailing duty investigation involving ACA and Radix. We will make the same adjustment to the ''All Others'' cash deposit rate by subtracting the rate attributable to export subsidies found in the countervailing duty investigation of honey from Argentina.

We will instruct Customs to require a cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds the EP, adjusted for the export subsidy rate. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Asociacion Cooperativas Argentinas (ACA)	38.71
Radix S.R.L. (Radix)	32.56
ConAgra Argentina	60.67
All Others	36.59

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 26, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo Comments and Responses

General

1. Adverse Facts Available
2. Cost of Production/Constructed Value Profit
3. Middlemen Reseller Expenses

Radix

4. Facts Available
5. German Testing Expenses
6. General and Administrative and Indirect Selling Expenses
7. Sales Reconciliation
8. Reembolso Reimbursements
9. Interest Expense
10. Inventory Carrying Costs

ACA

11. Indirect Selling Expenses
12. General and Administrative Expenses
13. Interest Expenses
14. German Testing Expenses
15. German Warranty Expenses
16. International Freight Expenses
17. Differences in Physical Characteristics in Merchandise
18. Level of Trade

[FR Doc. 01–24922 Filed 10–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Final Affirmative Countervailing Duty Determination: Honey From Argentina

AGENCY: Import Administration, International Trade Administration Department of Commerce.

ACTION: Notice of final affirmative countervailing duty investigation.

SUMMARY: On March 13, 2001, the Department of Commerce (the Department) published in the **Federal Register** its preliminary affirmative determination in the countervailing duty investigation of honey from Argentina. Based on our analysis of the questionnaire responses, verification, and the comments submitted by the parties, we determine that subsidies are being conferred on the manufacture, production and export of honey from Argentina. The subsidy rates in this final determination differ from those in the preliminary determination. The revised final subsidy rates for the investigated producers/exporters are listed below in the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: October 4, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn at (202) 482–4236, Holly Hawkins at (202) 482–0414 or Christian Hughes at (202) 482–0648, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On March 13, 2001, the Department published the results of its preliminary determination in the investigation of Honey From Argentina. *See Honey from Argentina: Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Determination on Honey from the People's Republic of China,* 66 FR 14521 (*Preliminary Determination*). We invited interested parties to comment on the *Preliminary Determination.*

On April 3, 2001, we issued a supplemental questionnaire to the Government of Argentina. We received a response to this questionnaire on April 30, 2001. On May 7, 2001, we received comments from petitioners regarding the verification of the questionnaire responses. Verification of the questionnaire responses provided by the Government of Argentina (GOA) was conducted May 30 through June 11, 2001. We also met with an independent banker in Argentina during this time period.

On May 31, 2001, we postponed the final determination in this investigation until September 24, 2001, pursuant to the postponement of the final determination in the companion antidumping duty investigation of honey from the People's Republic of China with which this investigation had

previously been aligned. *See Notice of Postponement of Final Determination of Sales at Less Than Fair Value: Honey from Argentina and the People's Republic of China and Postponement of Final Countervailing Duty Determination: Honey from Argentina,* 66 FR 30413 (June 6, 2001).

The GOA and petitioners submitted timely case and rebuttal briefs in this investigation.

Although the deadline for this determination was originally September 24, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this determination has been extended by two days.

Scope of the Investigation

The merchandise subject to this investigation is natural honey, artificial honey containing more than 50 percent natural honeys by weight, preparations of natural honey containing more than 50 percent natural honeys by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, combs, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this investigation is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the Department's written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

The programs under investigation, as well as the issues raised in the case and rebuttal briefs submitted in this countervailing duty investigation are discussed and addressed in the *Issues and Decision Memorandum in the Final Affirmative Countervailing Duty Determination: Honey from Argentina*, from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated September 26, 2001, (*Decision Memorandum*) which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the programs under investigation, as well as a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum.* Parties can find a complete discussion of the programs and issues raised in this investigation, and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, in room B–099. In addition, the *Decision Memorandum* can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov*, under the heading ''Federal Register Notices.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension Agreement

On August 24, 2001, the Department and the Government of Argentina initialed a proposed suspension agreement and the Department gave interested parties until September 14, 2001 to comment on the proposed agreement. However, the Department and the Government of Argentina did not sign a final suspension agreement on honey from Argentina by the deadline date of September 26, 2001. Consequently, we have not addressed petitioners' and the GOA's comments on the proposed suspension agreement.

Suspension of Liquidation

In accordance with section 777A(e)(2)(B) of the Act, we have calculated an aggregate or industry-wide rate for all of the producers/exporters of honey under investigation. We have determined that the total estimated countervailable subsidy rate is 4.53 percent *ad valorem.* However, due to a program-wide change, we have established a cash deposit rate of 5.85 percent *ad valorem* in accordance with section 351.526(a) of the Department's regulations.

In accordance with our preliminary affirmative determination, we instructed Customs to suspend liquidation of all entries of honey from Argentina, which were entered or withdrawn from warehouse for consumption on or after March 13, 2001, the date of the publication of our preliminary determination in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated in the *Preliminary Determination.* In accordance with section 703(d) of the Act, we instructed Customs to discontinue the suspension of liquidation for merchandise entered on or after August 18, 2001, but to continue the suspension of liquidation of entries made between March 12, 2001 and August 18, 2001.

We will reinstate suspension of liquidation under section 706(a) of the Act for all entries if the ITC issues a final affirmative injury determination, and we will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amount indicated above. This suspension of liquidation, if reinstated, will be effective on the date of publication of the countervailing duty order. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publically or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated. If however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination and notice are issued and published in accordance with sections 705(d) and 777(i) of the Act.

Dated: September 26, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

I. *Subsidies Valuation Information*
  A. *Aggregation*
  B. *Green Box Claims*
  C. *Allocation Period*
  D. *Discount Rates and Benchmark Loan Rates*
  E. *Denominators*
II. *Programs Determined to Confer Subsidies*
  A. Federal Programs
  1. *Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)*

2. *BNA Pre-Financing of Exports Regime for the Agriculture Sector*
3. *Regional Productive Revitalization: National Program for the Promotion and Development of Local Productive Initiative* (Dinamizacion Productiva Regional Nacional de Promocion y Fomenta de la Iniciativa Productiva Local)
B. Provincial Government Programs
1. *Buenos Aires Honey Program*
a. *Line of Credit for Working Capital*
b. *Line of Credit for the Acquisition of Capital Goods*
c. *Technical Assistance*
2. *Province of Chaco Line of Credit Earmarked for the Honey Sector*
3. *Province of San Luis Honey Development Program*
a. *Leasing Agreements*
b. *CFI Lines of Credit*
III. *Programs Determined Not to Confer Subsidies*
A. Federal Programs
1. *BNA Line of Credit for Working Capital and Investment Purposes*
2. *Global Credit Program for Micro and Small Businesses*
3. *Credit for Small Business Ventures*
4. *National Income Tax Exemption Pursuant to Article 20(1) of Law 20,628*
5. *Law 22,913 Emergency Aid/Emergency Agricultural and Livestock Law*
6. *BICE Norm 007: Line of Credit Offered to Finance Industrial Investment Projects, and Projects to Restructure and/or Modernize the Argentine Industry*
7. *PROAPI*
B. Provincial Government Program
Exemption from Municipal Gross Income Tax Contingent on Export Activity Pursuant to Article 116(12) of Law 150 (Buenos Aires Gross Income Tax Exemption)
IV. *Programs Determined to be Not Used*
A. Federal Programs
1. *BICE Norm 011: Financing of Production of Goods Destined for Export*
2. *BNA Line of Credit to the Agricultural Producers of the Patagonia (Regulation Annex to Circular BNA No. 10,111/1)*
3. *BNA Financing for the Acquisition of Goods of Argentine Origin Line of Credit for the Acquisition of Industrial and Agricultural Machinery, Silos and Transportation Vehicles*
4. *"Production Pole" Program for Honey Producers*
5. *Enterprise Restructuring Program (PRE)*
6. *Government Backed Loan Guarantees (SGR)*
7. *Fundacion Export*Ar*
B. Provincial Government Programs
1. *Province of Chubut Honey Program under Law No. 4430/98*
2. *Province of Santiago del Estero: Creditos de Confianza (Trust Credits)*
3. *Entre Rios Honey Program: Law No. 7435/84*
V. *Federal Programs Determined to be Terminated*
A. Federal Programs
1. *PROMEX Consortium for Honey Exportation*
2. *Regional Promotional Scheme-Reimbursement "Patagonico": Exemption of Import Duties on Capital Goods*
B. Provincial Program
Formosa Honey Program/Undomesticated Bee Development Project
VI. *Programs Determined Not to Exist*
A. Federal Programs
1. *BNA Warrant-Based Export Financing*
2. *Honey-Specific Line of Credit Program for the Pre-Financing of Development Expenses Associated with Export Sales*
B. Provincial Government Programs
1. La Pampa Lines of Credit
2. Province of San Luis: Creditos de Confianza (Trust Credits)
VII. Analysis of Comments
Comment 1: Initiation Standard
Comment 2: Denominator
Comment 3: Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)
Comment 4: The System for Determining the Reintegro
Comment 5: The Credibility of the EcoLatina Report
Comment 6: The EcoLatina Report: Examination of the Indirect Tax Incidence for the Argentine Honey Sector
Comment 7: The EcoLatina Report: Indirect Taxes
Comment 8: Buenos Aires Honey Program: Specificity of the Line of Credit for Working Capital
Comment 9: Buenos Aires Honey Program: Specificity of the Line of Credit for the Acquisition of Capital Goods
Comment 10: Buenos Aires Honey Program: Benchmark Rate
Comment 11: Chaco Line of Credit Earmarked for the Honey Sector
Comment 12: San Luis Honey Development Program: Countervailability of the Leasing Component
Comment 13: San Luis Honey Development Program: Leasing Component Calculations
Comment 14: CFI Credit for Small Business Ventures Program Loans to the Honey Sector and De Jure Specificity
Comment 15: CFI Financing: De Jure/De Facto Specificity
Comment 16: CFI Credit for Small Business Ventures in the Province of San Luis: Link between Programs
Comment 17: Countervailability of BICE Norm 007
Comment 18: PROAPI'S Sales of Fertilized Queen Bees: Adequacy of Remuneration
Comment 19: Use of BNA Loan Programs
Comment 20: Countervailability of Fundacion Export*Ar Program
Comment 21: Warrant-Based Financing
VIII. Total Ad Valorem Subsidy Rate
IX. Recommendation

[FR Doc. 01–24923 Filed 10–3–01; 8:45

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 010924230–1230–01]

RIN 0693–ZA46

State Relations Rapid Response Team (SR3 Team) Grants Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Availability of Funds.

SUMMARY: The National Institute of Standards and Technology Manufacturing Extension Partnership program (NIST–MEP) invites proposals from qualified organizations to facilitate dialog among participants in the MEP system and its stakeholders, including state governments, MEP Centers, industry, and NIST. All organizations meeting the eligibility requirements provided herein are invited to submit proposals.

DATES: Proposals from qualified applicants must be received no later than 5:00 PM Eastern Standard Time November 5, 2001.

ADDRESSES: For the SR3 Team Grants Program, each applicant must submit one signed original and two copies of the proposal along with a Grant Application Kit (Standard Form 424 Rev. 7/97, and other required forms/documentation) to: Manufacturing Extension Partnership Program (MEP); ATTN: Jennifer Ruggles; National Institute of Standards and Technology; 100 Bureau Drive, Stop 4800; Gaithersburg, MD 20899–4800; Telephone: (301) 975–4749; *E-mail:jruggles@mep.nist.gov;* Website: http://www.mep.nist.gov.

FOR FURTHER INFORMATION CONTACT: Jennifer Ruggles; National Institute of Standards and Technology; 100 Bureau Drive, Stop 4800; Gaithersburg, MD 20899–4800; Telephone: (301) 975–4749; E-mail:jruggles@mep.nist.gov. All grants administration questions concerning this program should be directed to the NIST Grants Office at (301) 975–6329; joyce.brigham@nist.gov.

SUPPLEMENTARY INFORMATION:

Authority: The authority for the SR3 Team Grants Program is as follows: As authorized by 15 U.S.C. 272 (b)(1) and (c)(17), the NIST 3R3 Team Grants Program conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Background: The MEP system of centers and field offices is a federal-

state-industry partnership. The strength of this partnership is that it has the potential to integrate federal and state public policy goals, utilizing market forces designed to address the unique needs of individual small manufacturers. This integration is driven in no small part by the nature of funding for individual MEP centers. The stated goal of funding ⅓rd of Center costs from federal investment, ⅓rd from state investment, and ⅓rd from private sources (typically fee for service) reflects this strong desire for an evenly balanced partnership.

On the public sector side of the funding equation, the balance of federal and state investment in the centers reflects the need and desire for balancing U.S. national policy priorities with those of our state partners. Both federal and state partners are interested in addressing the core challenges facing small manufacturers in remaining globally competitive, but the variety of regional economic and political concerns causes disparities between priorities from state to state and between the states and the Federal government. Given the unique nature of the MEP network, successful provision of MEP services for the public benefit depends on the alignment of state policy goals with the goal of improving technology transfer to manufacturers.

Program Description and Objectives: The objective of the SR3 Team Grants Program is to implement strategies that will facilitate dialogue among participants in the MEP system and its stakeholders, including state governments, MEP Centers, industry, and NIST. The primary reasons for encouraging this dialogue are to support the network of manufacturing extension centers by enabling them to respond more effectively to their state investors, and to increase the level of engagement of all state and local technology-oriented economic development partners in the MEP network.

In considering how to implement this project's mission, MEP has identified four three priority strategies for enhancing the MEP-state relationship: (1) Network building, (2) competitive intelligence/knowledge building, and (3) capacity building and technical assistance which are explained in more detail below. The recipient(s) that receive(s) the award(s) should be competent in these areas.

The network building strategy should facilitate networking among state thought leaders, policy makers, and practioners involved in technology-based economic development planning and program implementation. The recipient should understand the needs of state stakeholders and help encourage a dialogue among interested parties, including states, MEP Centers, and industry, about how the MEP partnership best fits into particular state strategies and priorities, and how manufacturers and the public benefit from manufacturing extension activities.

The competitive intelligence/knowledge building strategy should develop information about the current state of the partnership between states, MEP Centers, industry, and NIST through intelligence gathering,'' and provide tools to help the partners in the MEP improve and sustain relationships.

The capacity building and technical assistance strategy should involve the use of highly skilled consultants to: (a) Develop strategies to improve manufacturing extension services by enhancing relationships between Centers and states; and (b) intervene in State/Center relations when communication gaps occur. These consultants should be able to spend time with the Centers, their boards, and/or states on a one-on-one basis to explore the environment and offer solutions to enhance manufacturing extension services by improving states' relationships with Centers. The recipient would be expected to set up high-level meetings and travel to the state stakeholders that can make decisions about the funding and positioning of the Center within the State priorities. To do this most effectively, the recipient should have a database of information about key state leaders that is accessible to partners in the MEP system.

Eligibility: Eligible applicants are institutions of higher education, non-profit organizations, and commercial organizations.

Funding Availability: For the SR3 Team Grants Program, the NIST Manufacturing Extension Partnership Program anticipates funding of approximately $200,000 annually. The expectation is to award one proposal. However, NIST MEP reserves the right to divide the total award amount to multiple recipients in the event that all the priorities cannot be met in their entirety by one proposal. Proposals may be subdivided and partially funded to accommodate this approach.

Proposal Review and Evaluation Criteria: NIST will conduct an initial screening of all applications received by the deadline for non-responsive proposals, which will not be considered further.

NIST will then appoint at least three independent, objective individuals with relevant expertise to conduct an objective evaluation of each responsive proposal in accordance with the evaluation criteria set forth in this Notice. The reviewers may discuss the proposals, but each reviewer will rate the proposals independently. No consensus advice will be given by the reviews.

Next, one or more Federal employees will establish a rank order of the proposals based on the reviewers' scores, statistically normalized if discrepancies in scoring are apparent, and will present the rank order and the reviewers' comments to the Selecting Official, the MEP Director. The Selecting Official will select proposals for prospective funding based on the rank order, the compatibility of the proposals with the program objective and priorities described above, and the availability of funds. The Selecting Official may select proposals out of rank order. If the Selecting Official selects out of rank order, they must justify the selection in writing based on these factors.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer, based on compliance with application requirements as published in this Notice, compliance with applicable legal and regulatory requirements, and whether the selected applicants appear to be competently managed, responsible, and committed to achieving the objectives of the awards they receive.

Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by NIST prior to award.

The decision of the Grants Officer is final.

Evaluation Criteria

1. Past performance, corporate capability, administration and management expertise (40 points).

(a) Experience and capability to conduct work of the type and the scope requested in this notice.

(b) Ability to develop and manage teams and multi-dimensional partnerships to support this objective.

(c) Experience conducting high quality analyses within time, scope and budget.

(d) Ability to provide stability, continuity, and uniformity of staff and management over the life of the award.

2. Technical approach (30 points).

(a) Tasks and overall direction, oversight, and allocation against the various elements required in this multi-faceted effort. Soundness of technical approach for managing resources.

(b) Proposer's understanding and experience operating in a fast-

turnaround environment to conduct high quality research, evaluation, and program monitoring in support of the MEP system's policy and program needs.

3. Quality, experience, and breadth of technical and professional personnel (30 points).

(a) Experience with the MEP system, government or other public programs and polices. Preference is given to the categories of prior experience in the following order:

(1) Developed and maintained relationships with state economic development entities and other non-Federal MEP stakeholders.

(2) Developed and delivered technical assistance in the areas of manufacturing extension, technology deployment and manufacturing center performance.

Award Period: For the SR3 Team Grants Program, proposals will be considered from one to five years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress and continued relevance to the mission of the SR3 Team Grants Program, and the availability of funds. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (i.e., the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Matching Requirements: The SR3 Team Grants Program does not require any matching funds by the applicants.

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.609.

Application Kit: Each applicant must submit one signed original and two copies of the proposal along with a Grant Application Kit. An application kit, containing all required application forms and certifications is available by contacting Jennifer Ruggles, *jruggles@mep.nist.gov,* (301) 975–4749. It is also available at the website: www.mep.nist.gov.

The application kit includes the following:

SF 424 (Rev 7/97)—APPLICATION FOR FEDERAL ASSISTANCE

SF 424A (Rev 7/97)—BUDGET INFORMATION—Non-Construction Programs, including a detailed budget narrative explaining the details of each budget category and the basis for the cost. If indirect costs are included in the budget, a copy of the applicant's negotiated indirect cost rate must be submitted, if available.

SF 424B (7/97)—ASSURANCES—Non-Construction Programs

CD 511 (7/91)—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS AND LOBBYING

CD 512 (7/91)—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS AND LOBBYING

SF–LLL—DISCLOSURE OF LOBBYING ACTIVITIES

CD–346—APPLICANT FOR FUNDING ASSISTANCE

Paperwork Reduction Act

The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects

Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon NIH and other federal agencies regarding these topics, all regulatory policies and guidance adopted by NIH, FDA, and other federal agencies on these topics, and all Presidential statements of policy on these topics.

On December 3, 2000, the U.S. Department of Health and Human Services (DHHS) introduced a new Federalwide Assurance of Protection of Human Subjects (FWA). The FWA covers all of an institution's Federally-supported human subjects research, and eliminates the need for other types of Assurance documents. In anticipation of the new Assurance, the Office for Human Research Protections (OHRP) has suspended processing of multiple project assurance (MPA) renewals. All existing MPAS will remain in force until further notice. For information about FWAs, please see the OHRP website at http://ohrp.osophs.dhhs.gov/irbasur.htm.

In accordance with the DHHS change,. NIST will continue to accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) prossessing a current, valid MPA from DHHS. NIST also will accept the submission of human subjects protocols that have been approved by IRBs possessing a current, valid FWA from DHHS. NIST will not issue an SPA for any IRB reviewing any human subjects protocol proposed to NIST.

Research Projects Involving Vertebrate Animals

Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's ''Guide for the Care and Use of Laboratory Animals'' which can be obtained from National Academy Press, 2101 Constitution Avenue, NW, Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 et seq.), 9 CFR parts, 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanased, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Type of Funding Instrument

The funding instrument will be a grant or cooperative agreement, depending on the nature of the proposed work. A grant will be used unless NIST is ''substantially involved'' in the project, in which case a cooperative agreement will be used. A

common example of substantial involvement is collaboration between NIST scientists and recipient scientists or technicials. Further examples are listed in Section 5.03.d of Department of Commerce Administrative Order 203–26, which can be found at http://www.osec.doc.gov/bmi/daos/203–26.htm. NIST will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for contractual arrangements for services and products for delivery to NIST is not available under this announcement.

Additional Requirements

Primary Application Certifications

All primary applicant institutions must submit a completed form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations must be provided:

1. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, Subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying. Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,.'' and the lobbying section of the certification form prescribed above applies to application/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

4. Anti-Lobbying Disclosure. Any applicant institution that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, Appendix B.

5. Lower-Tier Certifications. Recipients shall require applicant/bidder institutions for subgrants, contracts, subcontracts, or other tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

Name Check Reviews

All for-profit and non-profit applicants will be subject to a name check review process. Name checks are intends to reveal if any key individuals associated with the applicant have been convicted or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Form CD–346 must be completed for all personnel with key programmatic or fiduciary responsibilities.

Preaward Activities

Applicants (or their institutions) who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover pre-award costs.

No Obligation for Future Funding

If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

False Statements

A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,

2. A negotiated repayment schedule is established and at least one payment is received, or

3. Other arrangements satisfactory to DoC are made.

Indirect Costs: Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the DoC will reimburse the Recipient shall be the lesser of:

(a) The Federal Share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or

(b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

Purchase of American-made Equipment and Products: Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

Federal Policies and Procedures: Recipients and subrecipients of the SR3 Team Grants Program shall be subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards, including 15 CFR Part 14 and 15 CFR Part 24, as applicable.

The SR3 Team Grants Program does not directly affect any state or local government.

Applications under the SR3 Team Grants Program are not subject to Executive Order 12372, ''Intergovernmental Review and Federal Programs.''

Executive Order Statement: This funding notice was determined to be ''not significant'' for purposes of Executive Order 12866.

Dated: September 26, 2001.

Karen H. Brown,

Deputy Director.

[FR Doc. 01–24928 Filed 10–3–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Membership of NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of an additional member to serve on the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees, and SES recertification. The appointment of members to the NOAA PRB will be for a period of 24 months.

EFFECTIVE DATE: The effective date of service of the additional appointee to the NOAA Performance Review Board is September 21, 2001.

FOR FURTHER INFORMATION CONTACT: David M. Belt, Executive Resources Program Manager, Human Resources Management Office, Office of Finance and Administration, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0530 (ext. 204).

SUPPLEMENTARY INFORMATION: The name and position title of the additional member of the NOAA PRB is set forth below: Louis W. Uccellini, Director, National Centers for Environmental Prediction, National Weather Service, NOAA.

Dated: September 24, 2001.

Scott B. Gudes,

Acting Under Secretary/Administrator and Deputy Under Secretary.

[FR Doc. 01–24784 Filed 10–3–01; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 010126025–1231–02]

RIN 0651–AB34

Request for Comments on Development of a Plan To Remove the Patent and Trademark Classified Paper Files From the Public Search Facilities; Reopening of Comment Period

AGENCY: United States Patent and Trademark Office.

ACTION: Notice of request for public comment; Reopening of comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO) requests public comment on issues associated with the development of a plan to remove the patent and trademark classified paper files from the USPTO's public search libraries and replace them with electronic records. These public search facilities are currently located in Crystal City, Arlington, Virginia. Interested members of the public are invited to present comments on the appropriate scope for and contents of this plan, including the topics outlined in the **SUPPLEMENTARY INFORMATION** section of this notice. The Notice of Request for Comments on Development of a Plan To Remove the Patent and Trademark Classified Paper Files From the Public Search Facilities was published at 66 FR 45012 on August 27, 2001. The period for comment in the Notice of Request for Comments ended September 26, 2001. Due to the number of requests from the public for an extension of the comment period for this notice, the comment period is reopened, and comments will be accepted by the USPTO until October 29, 2001. Comments received after September 26, 2001, but before the date this notice is published will also be accepted.

DATES: Written comments will be accepted by the USPTO until October 29, 2001.

ADDRESSES: Those interested in presenting written comments on the topics presented in the **SUPPLEMENTARY INFORMATION**, or any related topics, may mail their comments to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Washington, D.C. 20231, marked to the attention of Ronald Hack, Acting Chief Information Officer, or send them by facsimile transmission to (703) 308–7792.

Parties are encouraged to provide their comments in machine-readable format and send them over the Internet as electronic mail messages to file-removal@uspto.gov. Machine-readable submissions should be provided as unformatted text (e.g., ASCII or plain text), or as formatted text in one of the following file formats: Microsoft Word (Macintosh, DOS or Windows versions) or WordPerfect (Macintosh, DOS or Windows versions). Machine-readable submissions may be provided on a 3½-inch floppy disk formatted for use in either a Macintosh or MSDOS-based computer, mailed to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Washington, DC 20231, marked to the attention of Ronald Hack, Acting Chief Information Officer.

FOR FURTHER INFORMATION CONTACT: Ronald Hack by telephone at (703) 305–9095, by facsimile at (703) 308–7792, by electronic mail at *ronald.hack@uspto.gov;* Martha Sneed by telephone at (703) 308–5558, by facsimile at (703) 306–2654, by electronic mail at martha.sneed@uspto.gov; or by mail addressed to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Washington, DC 20231, marked to the attention of Ronald Hack, Acting Chief Information Officer.

SUPPLEMENTARY INFORMATION: The Notice of Request for Comments on Development of a Plan To Remove the Patent and Trademark Classified Paper Files From the Public Search Facilities was published at 66 FR 45012 on August 27, 2001. The period for comment in the Notice of Request for Comments ended September 26, 2001. The comment period is reopened, and comments will be accepted by the USPTO until October 29, 2001. Comments received after September 26, 2001, but before the date this notice is published will also be accepted. All comments should include the following information:

Name and affiliation of the individual responding;

An indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views; and

If applicable, information on the respondent's organization, including the type of organization (e.g., business, trade group, university, non-profit organization).

Dated: September 28, 2001.

Anne H. Chasser,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 01–24880 Filed 10–3–01; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting; Notice

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, October 11, 2001, 10 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Hydrocarbons

The staff will brief the Commission on a final rule to require child-resistant packaging for certain household products containing hydrocarbons.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: October 2, 2001.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 01–25075 Filed 10–2–01; 3:22 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Monday, October 15, 2001, 2 p.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bed Rails

The staff will brief the Commission on options for Commission action to address hazards associated with portable bed rails.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 2, 2001.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 01–25076 Filed 10–2–01; 3:15 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Office of Management and Budget has approved this information collection requirement for use through October 31, 2001.

DATES: Consideration will be given to all comments received by November 5, 2001.

Title, Form Number, and OMB Number: Application for Annuity—Certain Military Surviving Spouses, DD Form 2769; OMB Number 0704–0402.

Type of Request: Extension.

Number of Respondents: 200.

Responses Per Respondent: 1.

Annual Responses: 200.

Average Burden Per Response: 1 Hour.

Annual Burden Hours: 200.

Needs and Uses: The respondents of this information collection are surviving spouses of each member of the uniformed services who (1) died before March 21, 1974, and was entitled to retired or retainer pay on the date of death or (2) was a member of a reserve component of the Armed Forces before October 1, 1978, and at the time of member's death would have been entitled to retired pay. The Defense Authorization Act of FY 1998, Pub. L. 105–85, Section 644 (as amended by Pub. L. 106–65, Section 656) requires the Secretary of Defense to pay an annuity to qualified surviving spouses. The DD Form 2769, Application for Annuity—Certain Military Surviving Spouses, used in this information collection, provides a vehicle for the surviving spouse to apply for the annuity benefit. The Department will use this information to determine if the applicant is eligible for the annuity benefit and make payment to the surviving spouses.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 27, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–24799 Filed 10–3–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Training for Future Conflict will meet in closed session on November 5–6, 2001, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA. This Task Force will focus on identifying and characterizing what education and training are demanded by Joint Vision 2010/2020, and will address the development and demonstration time phasing over the next two decades for the combined triad of technology modernization, operational concepts, and training.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will also identify those approaches and techniques that potential enemies might take that could prepare them to revolutionize their warfare capabilities, thereby achieving a training surprise against the U.S. or its allies. This review will include, but not be limited to, unique training/education developments which might be spawned by allies or an adversary, training techniques and methodologies which might be transferred from the U.S. or through third parties, and finally, the possibilities emerging as a result of the globalization of military and information technologies, related commercial services and their application by other nations.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: September 28, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–24798 Filed 10–3–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 220. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 220 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: October 1, 2001.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 219. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001–08–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 220 UPDATES RATES FOR KOTZEBUE, ALASKA.				
ALASKA				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
BARROW	140	75	215	05/01/2000
BETHEL	90	63	153	09/01/2001
CLEAR AB	80	55	135	09/01/2001
COLD BAY	153	44	197	09/01/2001
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER	85	49	134	09/01/2001
CORDOVA	80	72	152	03/01/2000
CRAIG				
05/01 - 08/31	90	65	155	09/01/2001
09/01 - 04/30	77	64	141	09/01/2001
DEADHORSE	80	67	147	03/01/1999
DELTA JUNCTION	79	50	129	09/01/2001
DENALI NATIONAL PARK				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
DILLINGHAM	95	60	155	09/01/2001
DUTCH HARBOR-UNALASKA	110	67	177	09/01/2001
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
ELMENDORF AFB				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
FAIRBANKS				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
FT. GREELY	79	50	129	09/01/2001
FT. RICHARDSON				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
FT. WAINWRIGHT				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
GLENNALLEN				
05/01 - 09/30	137	61	198	09/01/2001
10/01 - 04/30	89	56	145	09/01/2001
HEALY				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
HOMER				
05/15 - 09/15	119	67	186	09/01/2001
09/16 - 05/14	79	63	142	09/01/2001
JUNEAU	109	65	174	09/01/2001

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAKTOVIK	165	75	240	01/01/2000
KAVIK CAMP	125	69	194	03/01/1999
KENAI-SOLDOTNA				
04/01 - 10/31	131	69	200	09/01/2001
11/01 - 03/31	86	65	151	09/01/2001
KENNICOTT	159	71	230	09/01/2001
KETCHIKAN	98	64	162	09/01/2001
KING SALMON				
05/01 - 10/01	160	80	240	09/01/2001
10/02 - 04/30	95	73	168	09/01/2001
KLAWOCK				
05/01 - 08/31	90	65	155	09/01/2001
09/01 - 04/30	77	64	141	09/01/2001
KODIAK	99	70	169	09/01/2001
KOTZEBUE				
09/01 - 04/30	95	62	157	10/01/2001
05/01 - 08/31	137	69	206	09/01/2001
KULIS AGS				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
MCCARTHY	159	71	230	09/01/2001
METLAKATLA				
05/30 - 10/01	98	56	154	09/01/2001
10/02 - 06/01	78	54	132	09/01/2001
MURPHY DOME				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
NOME	89	64	153	09/01/2001
NUIQSUT	175	53	228	09/01/2001
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/31 - 09/30	119	66	185	09/01/2001
10/01 - 05/30	74	61	135	09/01/2001
SITKA-MT. EDGECOMBE				
05/16 - 09/16	139	73	212	01/01/2000
09/17 - 05/15	129	72	201	01/01/2000
SKAGWAY	98	64	162	09/01/2001
SPRUCE CAPE	99	70	169	09/01/2001
TANANA	89	64	153	09/01/2001
UMIAT	172	78	250	09/01/2001
VALDEZ				
05/01 - 10/01	109	69	178	09/01/2001
10/02 - 04/30	99	68	167	09/01/2001
WAINWRIGHT	124	51	175	09/01/2001
WASILLA	95	60	155	01/01/2000
WRANGELL	98	64	162	09/01/2001
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	150	71	221	04/01/2000
HAWAII				
CAMP H M SMITH	112	65	177	06/01/2000
EASTPAC NAVAL COMP TELE AREA	112	65	177	06/01/2000
FT. DERUSSEY	112	65	177	06/01/2000
FT. SHAFTER	112	65	177	06/01/2000
HICKAM AFB	112	65	177	06/01/2000
HONOLULU (INCL NAV & MC RES CTR)	112	65	177	06/01/2000
ISLE OF HAWAII: HILO	84	58	142	05/01/2000
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	143	69	212	06/01/2000
12/01 - 04/30	176	73	249	06/01/2000
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	143	72	215	05/01/2000
ISLE OF OAHU	112	65	177	06/01/2000
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	143	69	212	06/01/2000
12/01 - 04/30	176	73	249	06/01/2000
KILAUEA MILITARY CAMP	84	58	142	05/01/2000
LUALUALEI NAVAL MAGAZINE	112	65	177	06/01/2000
MCB HAWAII	112	65	177	06/01/2000
NAS BARBERS POINT	112	65	177	06/01/2000
PEARL HARBOR [INCL ALL MILITARY]	112	65	177	06/01/2000
SCHOFIELD BARRACKS	112	65	177	06/01/2000
WHEELER ARMY AIRFIELD	112	65	177	06/01/2000
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	16	29	12/01/2000
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	04/01/2000
SAIPAN	154	87	241	04/01/2000
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

Dated: September 26, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 01–24800 Filed 10–3–01; 8:45 am]

BILLING CODE 5001–08–C

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 (P.L. 92–463), announcement is made of the following Study Group Meeting.

Name of Study Group: Asymmetric Study Group.

Date of Meeting: 08 October 2001.

Time of Meeting: 0800–1630.

Place of Meeting: Presidential Towers, 2511 Jefferson Davis Highway, 10th Floor Conference Room, Arlington, VA 22202, Phone: (703) 604–7474, FAX: (703) 604–7699.

Agenda: The Army Science Board Study Group on ''Asymmetric Threats to Land Based Operations (2015–2020)'' will conduct a meeting to review the current gathered information. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Ms. Betty LaFavers, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), (703) 695–1683.

Kevin Dietrick,

Executive Secretary, Army Science Board.

[FR Doc. 01–24785 Filed 10–3–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Expansion Plan for the National Training Center (NTC) and Fort Irwin

AGENCY: National Training Center and Fort Irwin, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: Congress directed the Departments of the Army and Interior to draft a proposed plan that would expand the maneuver training lands at the NTC while protecting endangered and threatened species and their critical habitats. Public Law 106–554, Consolidated Appropriations Act, 2001, incorporates by reference House Report 5666, Miscellaneous Appropriations, Section 323, which calls upon the Secretaries jointly to provide to Congress the key elements of the proposed expansion plan no later than 45 days after enactment. Within 90 days after enactment, the Director of the Fish and Wildlife Service is to provide the Secretaries with a preliminary review of the plan that identifies an approach for implementing the plan consistent with the Endangered Species Act. Within 120 days of enactment, the Secretaries are required to submit a proposed expansion plan and to propose legislation for the withdrawal and reservation of public lands for the NTC expansion. All activities are to be taken in full compliance with the Endangered Species Act, the National Environmental Policy Act, and other applicable laws and regulations.

In partial satisfaction of the requirements of the NTC and Fort Irwin expansion provision, the Secretaries submitted the Key Elements Report to Congress on January 12, 2001, identifying the proposed expansion areas that are necessary to meet training requirements and setting forth proposed conservation measures to preserve and protect sensitive species and their habitats.

On March 28, 2001, the Director of the Fish and Wildlife Service provided the Secretaries with a Preliminary Review of the plan, identifying an approach for implementing the proposed expansion plan consistent with the Endangered Species Act. The Fish and Wildlife Service reviewed the key elements of the proposed expansion plan, including the proposed conservation measures, and provided its preliminary analysis of the effects of the proposed expansion on the desert tortoise and the Lane Mountain milk vetch. The Service also provided information on the aspects of an expansion for which additional information must be developed prior to the initiation of formal consultation pursuant to section 7(a)(2) of the Endangered Species Act. The Service noted that, although it had attempted to provide the most complete analysis possible, the receipt of new information between the date of the Preliminary Review and the conclusion of formal consultation may alter the conclusions it reached. The purpose of the Preliminary Review was to provide early information so the Department of the Army could prepare an expansion proposal that includes appropriate measures for ameliorating the effects to the desert tortoise and Lane Mountain milk vetch. The Preliminary Review does not constitute the Fish and Wildlife Service's biological opinion for the NTC's proposed expansion.

The Proposed Expansion Plan builds on the comments provided by the Fish and Wildlife Service in its Preliminary Review of the Effects of the Expansion of the NTC/Fort Irwin on the Desert Tortoise and Lane Mountain milk vetch and is submitted concurrently with a draft of proposed legislation providing for the withdrawal and reservation of public lands for the expansion of the NTC. We understand and reiterate to the Congress and to the public that these documents do not substitute for the processes required under the Endangered Species Act, the National Environmental Policy Act, or other applicable laws and regulations.

Copies of the Proposed Expansion Plan may be obtained via the web at http://www.dtic.mil/armylink/news/Jul2001/r2001071616july01.html or http://www.doi.gov/doipress/.

ADDRESSES: Requests for copies of the Proposed Expansion Plan may be made to the Public Affairs Office, National Training Center and Fort Irwin, P.O. Box 105001, Fort Irwin, California 92310 or by calling (760) 380–3078, FAX (760) 380–4860.

FOR FURTHER INFORMATION CONTACT: MAJ Robert Ali, Public Affairs Office, National Training Center and Fort Irwin, P.O. Box 105001, Fort Irwin, California, or by calling (760) 380–3078.

SUPPLEMENTARY INFORMATION: This Notice of Availability (NOA) of the Proposed Expansion Plan is not a call for public comments on the Plan as would be required for a NOA of an Environmental Impact Statement (EIS). This NOA of the Proposed Expansion Plan does not substitute for the processes required under the Endangered Species Act, the National Environmental Policy Act, or other applicable laws and regulations. Consequently, there will be a **Federal Register** notice of intent to prepare a supplemental EIS and a subsequent notice of availability of a draft EIS for the NTC land expansion. Public comments will be accepted at that time on the draft EIS as required by the National Environmental Policy Act.

Dated: September 28, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 01–24885 Filed 10–3–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the general availability of exclusive or partially exclusive licenses under the following

pending patent. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

Patent application Serial Number 60/318827 entitled ''A Device to Mix and Administer a Mixture of Nitrogen and Oxygen to Create a Continuously Variable Gas Mixture'' filed September 14, 2001. The present invention includes a non-rebreathing circuit coupled with computer-controlled gas adjustments. Ambient air is diluted with nitrogen on a breath-by-breath basis to provide precise control over the inspired concentration of oxygen/nitrogen mixture of simulated altitude air on an almost instantaneous basis. Carbon dioxide and water vapor exhaled by the subject are released into the environment, and absorption is not necessary. In addition, the mixed gas can be administered through a standard aviator's oxygen mask, increasing the realism of the simulation and removing obvious external cues on the nature of the experiment. Maintenance on the mixing loop is lower compared to rebreathing units, since no consumable items are necessary to absorb water vapor or carbon dioxide. A mixing device provides a homogenized mixture of nitrogen/oxygen fluid to the user.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Submit applications to the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428 or E-Mail at *schlagelc@nmrc.navy.mil.*

Dated: September 26, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–24787 Filed 10–3–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Planning and Steering Advisory Committee (PSAC)

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: The purpose of this meeting is to discuss topics relevant to Ballistic Missile Submarine (SSBN) security. This meeting will be closed to the public.

DATES: The meeting will be held on Friday, October 12, 2001, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Center for Naval Analyses, 4825 Mark Center Drive, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Randy Craig, CNO (N775C2), 2000 Navy Pentagon, NC–1, Washington, DC 20350–2000, telephone (703) 604–7392.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

Dated: September 21, 2001.

T. J. Welsh,

Lieutenant Commander, Judge Advocate General's Corp, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–24788 Filed 10–3–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 5, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Karen_F._Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 28, 2001.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: School and Community Prevention Activities: A National Study of the Safe and Drug-Free Schools Program.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 4,589.

Burden Hours: 2,397.

Abstract: The Study ''School and Community Prevention Activities: A National Study of the Safe and Drug-Free Schools Program'' will assess the quality of prevention activities funded by the Safe and Drug-Free Schools and Communities Act Program and identify changes that will increase program effectiveness. Data collection will

include a pilot study, a national mail survey of districts and schools, a national mail survey of Governor's programs and a feasibility study of the relationship of quality and student outcomes. During site visits to a sub-sample of schools, detailed information will be gathered about program quality.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie.Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–24810 Filed 10–3–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 5, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Karen_F._Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 28, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: National Household Education Surveys Program of 2003 (NHES:2003).

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 2,400.

Burden Hours: 359.

Abstract: The NHES: 2003 will be a survey of households using random-digit-dialing and computer-assisted telephone interviewing. Two topical surveys are to be conducted in the NHES:2003: Parent and Family Involvement in Education (PFI–NHES:2003), and Adult Education work Work-related Reasons (AEWR–NHES:2003). Respondents to the PFINHES:2003 will be parents of children in kindergarten through 12th grade. Respondents to the AEWR–NHES:2003 will be persons age 16 and older who are not enrolled in elementary or secondary school. The PFI survey will provide NCES with current measures of children's educational experiences and family involvement in the education of their children and allow for the analysis of change over time. The AEWR survey will provide in-depth information on the participation of adults in training and education that prepares adults for work or careers and maintains or improves their skills.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her internet address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–24811 Filed 10–3–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–253]

Application To Export Electric Energy; Coral Canada US, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Coral Canada US Inc. (Coral) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 5, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On September 19, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Coral to transmit electric energy

from the United States to Canada as a power marketer. Coral, a Delaware corporation with its principal place of business in Houston, Texas, is indirectly owned by Shell Oil Company and Intergen, N.A. Coral does not own or control any electric power generation or transmission facilities and does not have a franchised service area.

Coral proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Coral, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Coral application to export electric energy to Canada should be clearly marked with Docket EA–253. Additional copies are to be filed directly with Andrea M. Settanni, Bracewell & Patterson, L.L.P., 2000 K Street, NW., Suite 500, Washington, DC 20006–1872 AND Robert Reilley, Vice President, Regulatory Affairs, Coral Canada US Inc., 909 Fannin, Suite 700, Houston, TX 77010.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov.* Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on September 28, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–24857 Filed 10–3–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–251]

Application To Export Electric Energy; Engage Energy America, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Engage Energy America, LLC (Engage America) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 5, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On September 13, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Engage America to transmit electric energy from the United States to Canada. Engage America, a Delaware limited liability company, is an indirect, wholly-owned subsidiary of Westcoast Energy Inc., a Canadian corporation. Engage America does not own or operate any electric power generation, transmission or distribution facilities. The power to be exported by Engage America will be purchased from electric utilities, power marketers, and federal power marketing agencies in the United States. Engage America has requested that export authority be granted for a term of five years.

Engage America proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Engage America, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with § 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Engage America application to export electric energy to Canada should be clearly marked with Docket EA–251. Additional copies are to be filed directly with Douglas F. John, John & Hengerer, 1200 17th Street, NW., Suite 600, Washington, DC 20036 AND Terrence O'Reilly, Vice President & Senior Counsel, Engage Energy America LLC, 39500 High Pointe Boulevard, Suite 260, Novi, MI 48375.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the

Fossil Energy Home Page at http://www.fe.de.gov. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on September 28, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–24858 Filed 10–3–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–250]

Application to Export Electric Energy; PSEG Energy Resources & Trade; LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: PSEG Energy Resources & Trade LLC (PSEG ER&T) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 5, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On September 14, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from PSEG ER&T to transmit electric energy from the United States to Canada. PSEG ER&T is a wholly-owned subsidiary of Public Service Enterprise Group (''PSEG''). PSEG ER&T is a fully integrated marketing and trading organization that is active in the long-term and spot wholesale energy markets. The power to be exported by PSEG ER&T will be surplus to the needs of PSEG ER&T's native load and may be supplied by PSEG ER&T-owned generation or purchased from electric utilities, power marketers, and federal power marketing agencies in the United States.

PSEG ER&T proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by PSEG ER&T, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the PSEG ER&T application to export electric energy to Canada should be clearly marked with Docket EA–250. Additional copies are to be filed directly with Steven R. Teitelman, President, PSEG Energy Resources & Trade LLC, 80 Park Plaza, T21, Newark, NJ 07102 AND Thomas P. Thackston, Senior Attorney, PSEG Services Corporation, 80 Park Plaza, T5G, Newark, New Jersey 07102.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on September 28, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–24856 Filed 10–3–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EF00–2012–000 and EF00–2012–001]

United States Department of Energy—Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

Issued September 28, 2001.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

In this order, we approve the Bonneville Power Administration's (Bonneville) proposed wholesale power rates [1] on an interim basis, pending our full review for final approval. We also provide for an additional period of time for the parties to file comments. The proposed wholesale power rates will allow Bonneville to recover its costs and repay the U.S. Treasury for the Federal investment in the Federal Columbia River Power System.

Background

On July 6, 2000, Bonneville filed a request for interim and final approval of its wholesale power rates in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) [2] and Subpart B of Part 300 of the Commission's regulations.[3]

On August 4, 2000, Bonneville filed a motion to stay the proceedings citing the unprecedented wholesale power price spikes in the west during the summer of 2000. As a result of the price spikes, Bonneville explained, preference

[1] The proposed wholesale power rates schedules that Bonneville seeks approval for the period of October 1, 2001 to September 30, 2006 include: PF–02 Priority Firm Power Rate, RL–02 Residential Load Firm Rate, NR–02 New Resource Firm Power Rate, IP–02 Industrial Firm Power Rate, NF–02 Nonfirm Energy Rate.

[2] Sections 7(a)(2) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. §§ 839e(a)(2) and 839e(i)(6)(1994).

[3] 18 CFR Part 300 (2001).

power customers were expected to abandon their plans to seek out power supplies from the market and instead purchase significantly more power from Bonneville than originally anticipated. According to Bonneville, the combination of an unanticipated increase in load coupled with higher and more uncertain market prices greatly diminished the prospect that its original proposed wholesale power rates would recover its costs and repay the U.S. Treasury for the Federal investment in the Federal Columbia River Power System.

On June 29, 2001, Bonneville filed a supplemental wholesale power rate filing.[4] The supplemental wholesale power rate filing adjusts the General Rate Schedule Provisions by replacing the capped single Cost Recovery Adjustment Clause (CRAC) with a three-component CRAC. In addition, the Dividend Distribution Clause has been modified to trigger starting in the second year of the rate period, rather than in the first year.

In the June 29, 2001 filing, Bonneville requests interim and final approval of the wholesale power rates that were originally filed on July 6, 2000, as revised by the supplemental wholesale power rate adjustment. Bonneville seeks approval of its wholesale power rates for the rate period October 1, 2001, through September 30, 2006.

Notice of Filing and Interventions

Notice of Bonneville's July 6, 2000 wholesale power rate filing was published in the **Federal Register**, 65 Fed. Reg. 44,041 (2000), with comments, protests, or motions to intervene due on or before August 1, 2000. Notice of Bonneville's June 29, 2001 supplemental wholesale power rate adjustment filing was published in the **Federal Register**, 66 FR 37664 (2001), with comments, protests, or motions to intervene due on or before August 3, 2001.

Avista Energy, Inc., Avista Corporation, Industrial Customers of Northwest Utilities, Vanalco, Inc., Idaho Consumer-Owned Utilities Association, Public Power Council, Goldendale Aluminum Company, Northwest Aluminum Company, Reynolds Metals Company, Kaiser Aluminum & Chemical Corporation, Columbia Falls Aluminum Company, Atofina Chemicals, Inc., (collectively, the DSI's), Alcoa Inc., Market Access Coalition, Blue Ridge Environmental Defense League, Columbia River Inter-Tribal Fish Commission, Confederated Tribes of the Umatilla Indian Reservation, Yakama Nation, Enron Power Marketing, Inc., Portland General Electric Company, Idaho Power Company filed timely motions to intervene, raising no substantive issues. The Oregon Public Utility Commission and Washington Utilities and Transportation Commission filed notices of intervention. PPL Montana, Upper Columbia United Tribes, Central Montana Electric Power Cooperative, Inc., Oregon Utility Resource Coordination Association, Shoshone-Bannock Tribes, and Springfield Utility Board, Northwest Requirements Utilities, filed motions to intervene out of time.

In addition, Industrial Customers of Northwest Utilities, Northwest Energy Coalition, Save Our Wild Salmon Coalition, City of Burbank, Puget Sound Energy, Inc., PacifiCorp, and Public Generating Pool (PGP) and the PNGC Group filed timely motions to intervene and protests. The DSI's filed an answer to PGP's and PNGC Group's protest.

Discussion

Procedural Matters

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.214 (2001), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the untimely, unopposed motions to intervene of PPL Montana, Upper Columbia United Tribes, Central Montana Electric Power Cooperative, Inc., Oregon Utility Resource Coordination Association, Shoshone-Bannock Tribes, and Springfield Utility Board, Northwest Requirements Utilities. Finally, we will deny the motion by the DSI's for leave to file an answer to a protest and an answer to an answer. We are not persuaded that good cause is present to depart from our general rule that such a pleading is prohibited.[5]

Standard of Review

Under the Northwest Power Act, the Commission's review of Bonneville's regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2):

(1) They must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs;

(2) They must be based upon the Administrator's total system costs; and

(3) Insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.[6]

Commission review of Bonneville's non-regional, nonfirm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Power Act,[7] which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act (Transmission System Act). Taken together, those statutes require Bonneville to design its non-regional, nonfirm rates:

(1) To recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(2) To encourage the most widespread use of Bonneville power; and

(3) To provide the lowest possible rates to consumers consistent with sound business principles.

Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under sections 7(a) and 7(k) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: to affirm or remand the rates submitted to it for review.[8]

Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,[9] the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the proposed rates, if not patently deficient, generally are approved on an interim basis and the parties are afforded an additional

[4] Docket No. EF00–2012–001.

[5] *See* 18 CFR § 385.213(a)(2)(2001).

[6] 16 U.S.C. § 839e(a)(2)(1994). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

[7] 16 U.S.C. § 839e(k)(1994).

[8] *E.G.,* United States Department of Energy—Bonneville Power Administration, 67 FERC ¶ 61,351 at 62,216–17 (1994); *see also, e.g.,* Aluminum Company of America v. Bonneville Power Administration, 903 F.2d 585, 592–93 (9th Cir. 1989), and cases cited therein.

[9] *See* 18 CFR § 300.10(a)(3)(ii)(2001).

opportunity in which to raise issues with regard to Bonneville's filing.[10]

Interim Approval

PGP and the PNGC Group request the Commission to make an early final determination of Bonneville's proposed rates and to reject the proposed rates because the rates are insufficient to assure repayment of the Federal investment. They also contend that Bonneville's proposed rates violate the Bonneville Project Act and the Northwest Power Act, which prohibit the subsidy of Direct Service Industrial customer rates by preference power customers.[11]

The Commission declines at this time to make an early final determination of Bonneville's proposed rates as requested by PGP and the PNGC Group. The Commission's preliminary review indicates that Bonneville's rate filings appear to meet the minimum threshold filing requirements of Part 300 of the Commission's regulations and the statutory standards. Because the Commission's preliminary review of Bonneville's submittals indicates that they do not contain any patent deficiencies, the proposed rates will be approved on an interim basis pending our full review for final approval. We note, as well, that no one will be harmed by this decision because interim approval allows Bonneville's rates to go into effect subject to refund with interest. The Commission may order refunds with interest if the Commission later determines in its final decision not to approve the rates.[12]

In addition, we will provide an additional period of time for the parties to file comments and reply comments on all issues related to final confirmation and approval of Bonneville's proposed rates. This will ensure that the record in this proceeding is complete and fully developed.

The Commission orders:

(A) PGP and the PNGC Group's request to reject Bonneville's request for interim approval of the proposed rates is hereby denied.

(B) Interim approval of Bonneville's proposed wholesale power rates is hereby granted, to become effective on October 1, 2001, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 CFR § 300.20(c) (2001), pending final action on either its approval or disapproval.

(C) Within thirty (30) days of the date of this order, all parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. All parties who wish to do so may file reply comments within twenty (20) days thereafter.

(D) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24888 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–P

[10] *See, e.g.,* United States Department of Energy—Bonneville Power Administration, 64 FERC ¶ 61,375 at 63,606(1993); United States Department of Energy—Bonneville Power Administration, 40 FERC ¶ 61,351 at 62,059–60(1987).

[11] *See* Bonneville Project Act, 16 U.S.C. § U.S.C. 832c(a)(1994) and Northwest Power Act, 16 U.S.C. § 839c(a)(1994).

[12] 18 CFR § 300.20(c)(2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–444–000]

Calypso Pipeline, Notice of Application

September 28, 2001.

Take notice that on September 19, 2001, Calypso Pipeline, LLC (Calypso), 1400 Smith Street, Houston, Texas 77002, filed and application in the above-referenced docket number pursuant to section 3 of the Natural gas Act (NGA) and Part 153 of the Commission's Rules and Regulations, and, in addition, Calypso requests, to the extent necessary, a Presidential Permit pursuant to 18 CFR 153.15–17 and Executive Order 10485, as amended by Executive Order 12038, and Secretary of Energy Delegation Order 0204–112 for the purpose of importing and transporting natural gas from a proposed interconnection at the U.S./Bahamian Exclusive Economic Zone (EEZ) boundary with a proposed Bahamian pipeline connected to a proposed LNG terminal located in Freeport, Grand Bahama Island to markets in Florida and other states. This application will be combined with the applications filed by Calypso under Docket Numbers CP01–409–000, *et al.* The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (please call (202) 208–2222 for assistance).

The description of the proposed facilities are described in the CP01–409–000, *et al.* application. For purposes of Section 3 of NGA, the EEZ boundary is considered a border where the proposed facilities will be constructed. The facilities consist of 250 feet of 24-inch pipeline constructed on the seabed of the Atlantic Ocean. Calypso states that it will provide transportation service, and will not take title to gas being imported. Therefore, it states that the Department of Energy, Office of Fossil Energy import authorization is not required.

Any questions regarding the application be directed to Alice K. Weekley, Calypso Pipeline, LLC, 333 Clay Street, Suite 1800, Houston, Texas 77002, at (713) 646–7381, or at *alice.weekley@enron.com.*

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 October 19, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 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, protests, and interventions 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 under the ''e-Filing'' link.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24891 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–443–000]

KN Wattenberg Transmission, LLC; Notice of Filing

September 28, 2001.

Take notice that on September 18, 2001, KN Wattenberg Transmission, LLC (KNW), filed a request pursuant to section 385.207 of the Federal Energy Regulatory Commission's (Commission) Regulations for a finding that 58.0 miles of pipeline and 38,932 horsepower of compressors in the Denver-Julesburg Basin production area in northeast Colorado are non-jurisdictional under the Natural Gas Act, as amended, Section 1(b), 15 U.S.C. 717(b)(1994). KNW requests that the Commission issue a declaratory order rescinding its certificate by November 30, 2001. The facilities will be sold to the Kerr-McGee Rocky Mountain Corporation, all as more fully set forth in the request, which is on file with the Commission, and open for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Any questions regarding this filing should be directed to Bud J. Becker, Assistant General Counsel, Kinder Morgan, Inc., P.O. Box 281304, 370 Van Gordon Street, Lakewood, Colorado 80228–8304, call 303–763–3496.

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 October 18, 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.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Comments, protests and interventions 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24890 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–312–057 and GT01–34–000]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

September 28, 2001.

Take notice that on September 14, 2001, Tennessee Gas Pipeline Company (Tennessee), 9 E Greenway Plaza, Houston, Texas 77046, tendered for filing a Negotiated Rate Arrangement with AES Londonderry L.L.C. (AES) and an original and five (5) copies of Revised Tariff Sheet No. 413A for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee requests that the Commission approve the Negotiated Rate Arrangement and filed tariff sheet to become effective October 1, 2001.

Tennessee states that in orders issued on August 1, 2000 and October 27, 2000 in Tennessee Docket No. CP00–48–000, the Commission approved Tennessee's

Negotiated Rate Arrangement with AES. In accordance with those Commission Orders, Tennessee is filing the negotiated rate arrangement. Tennessee is also submitting the referenced tariff sheet to list the FT–A Service agreement between it and AES as a non-conforming agreement as it contains a provision found previously by the Commission to ''materially deviate'' from Tennessee's *pro forma* FT–A Service Agreement.

Tennessee also requests that the Commission make a determination whether the Agency Authorization Agreement between Tennessee, AES and ABN AMRO Bank N.V., (Agency Agreement) constitutes a non-conforming service agreement. Tennessee states that the Agreement contains a provision for which Tennessee seeks a determination because it varies from the corresponding provisions in Tennessee's *Pro Forma* Agency Agreement. Section 4 of the Agency Agreement provides that the term of the agreement shall commence upon an event of default by AES as that term is defined in a separate agreement between AES and its lender. It also subjects AES' right to terminate the Agency Agreement to the lender's consent. Tennessee states that it does not consider the Agency Agreement to be non-conforming. Tennessee further states that in the event the Commission determines that the Agency Agreement ''deviates in any material aspect'' from Tennessee's *Pro Forma* Agency Agreement, Tennessee will, in a compliance filing, revise its FERC Gas Tariff to identify the Agency Authorization Agreement as a non-conforming service agreement.

Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24895 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–388–001]

Transcontinental Gas Pipe Line Corporation; Notice of Amendment

September 28, 2001.

Take notice that on September 24, 2001, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Boulevard, P.O. Box 1396, Houston, Texas 77251–1396, filed an amendment to its pending application in Docket No. CP01–388–000 for a certificate of public convenience and necessity authorizing its Momentum Expansion Project (Momentum), an incremental expansion of Transco's existing pipeline system to provide new firm transportation capacity to serve increased market demand in the Southeastern region of the United States by a proposed in-service date of May 1, 2003, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Transco states that it is filing the amendment to the Momentum application to redesign and downsize the project to reflect (i) the elimination of two shippers under the project, Athens Development Company, L.L.C. (85,000 dt/d), and Hartwell Development Company, L.L.C. (85,000 dt/d), who have exercised their rights to terminate their precedent agreements because they had not received all regulatory authorizations for construction of their power plants by August 1, 2001, as provided for in their precedent agreements, and (ii) the additional quantities subscribed under the project by the Municipal Gas Authority of Georgia (MGAG), as agent for the Cities of Buford and Winder, Georgia, respectively. Transco states that as a result of these changes in the firm transportation quantities under Momentum, Transco has eliminated certain pipeline loops and compression facilities from the project and shortened certain other loops. The shortened loops will be essentially within the ''footprint'' of the originally proposed loops, so there will be little environmental impact beyond the areas described in the application, and, in fact, the overall environmental impact of the project will be lessened because of the reduction in facilities under the project. Transco states that relocated loop terminals or tie-ins may take additional extra work space at a new location that was not contemplated under an original, longer loop, but the impact will be minor.

Transco states that the changes to the facilities originally proposed in the application are as follows:

1. The following compression facilities have been eliminated: (a) Installation of one new 15,000 horsepower compressor unit at Transco's existing Compressor Station No. 110, which is located in Randolph County, Alabama; (b) uprating of an existing 18,975 horsepower compressor unit (Unit No. 3) to 22,500 horsepower at Transco's existing Compressor Station No. 115, which is located in Coweta County, Georgia; and (c) installation of one new 15,000 horsepower compressor unit at Transco's existing Compressor Station No. 125, which is located in Walton County, Georgia. The compression facilities at Compressor Station Nos. 90, 105, 130 and 160 remain as originally proposed in the Application.

2. The following pipeline loops have been eliminated in their entirety: (a) 7.90 miles of 42-inch diameter pipeline loop from Mile Post 732.65 on Transco's mainline in Jones County, Mississippi to Mile Post 740.50 (the suction side of Compressor Station No. 80) in Jones County (the Seminary Loop); (b) 3.49 miles of 42-inch diameter pipeline loop from Mile Post 905.74 on Transco's mainline in Chilton County, Alabama to Mile Post 909.20 in Chilton County (the Richville Loop); and (c) 4.18 miles of 42-inch diameter pipeline loop from Mile Post 1,201.71 on Transco's mainline in Spartanburg County, South Carolina to Mile Post 1,205.81 (the suction side of Compressor Station No. 140) in Spartanburg County (the Greenville Loop).

3. The following pipeline loops have been shortened and are now proposed as follows: (a) 6.63 miles of 42-inch

diameter pipeline loop from Mile Post 632.89 on Transco's mainline in Amite County, Mississippi to Mile Post 639.44 in Pike County, Mississippi (the Magnolia Loop); (b) 5.55 miles of 42-inch diameter pipeline loop from Mile Post 767.38 on Transco's mainline in Clarke County, Mississippi to Mile Post 772.80 in Clarke County (the Hale Loop); (c) 25.38 miles of 48-inch diameter pipeline loop from Mile Post 860.78 on Transco's mainline in Perry County, Alabama to Mile Post 886.12 in Autauga County, Alabama (the Jones Loop); and (d) 19.01 miles of 42-inch diameter pipeline loop from Mile Post 926.87 (the discharge side of Compressor Station No. 105) on Transco's mainline in Coosa County, Alabama to Mile Post 945.64 in Tallapoosa County, Alabama (the Kellyton Loop). The 7.51 miles of 42-inch diameter pipeline loop proposed from Mile Post 1,124.74 (the discharge side of Compressor Station No. 130) on Transco's mainline in Madison County, Georgia to Mile Post 1,132.23 in Elbert County, Georgia (the Bowman Loop) remains as filed in the application.

Transco also states that it is also correcting the location of the delivery point for one of the Momentum shippers, Cardinal FG.

Transco estimates that the proposed facilities, as amended, will cost approximately $197 million. Transco states that the initial recourse rates have been revised to reflect such revised cost estimate and the reduced billing determinants under the project.

Any questions regarding this project should be directed to Toi Anderson, P. O. Box 1396, Houston, Texas 77251, at (713) 215–4540. In addition, Transco has established a toll-free telephone number (1–866–241–1787) so that parties can call with questions about the Momentum project.

Transco states that it still requests that the Commission issue a preliminary determination on the non-environmental aspects of its proposal by December 1, 2001 and a final order granting the authorizations requested in the application by April 15, 2002.

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 October 19, 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, protests and interventions 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 under the ''e-Filing'' link.

If the Commission decides to set the amended 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24889 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–335–000, et al.]

Astoria Energy LLC, et al., Electric Rate and Corporate Regulation Filings

September 27, 2001.

Take notice that the following filings have been made with the Commission:

1. Astoria Energy LLC

[Docket No. EG01–335–000]

Take notice that on September 24, 2001, Astoria Energy LLC (Astoria Energy) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Astoria Energy is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 85 Main Street, Concord, Massachusetts, 01742. Astoria Energy is a subsidiary of SCS Energy LLC (SCS). The members of SCS do not have any ownership interest in a franchised electric utility. Astoria Energy has filed an application with the New York State Board on Electric Generation Siting and the Environment to build and operate a nominal 1,000 MW combined cycle electric generation facility that will be located in Queens, New York. Astoria Energy is engaged directly and exclusively in the business

of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: October 18, 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.

2. City of Vernon, California

[Docket No. EL00–105–005]

Take notice that on September 24, 2000, the City of Vernon, California (Vernon) tendered for filing, in compliance with the Commission's September 14, 2001 ''Order Accepting Compliance Filing, As Modified'', 96 FERC ¶ 61,312, a revised Transmission Owner Tariff Sheet No. 19, making one ''ministerial'' correction to Section 12, thereof.

Vernon states that copies of this filing have been served on each person designated on the official service list compiled by the Secretary in these proceedings.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. The Montana Power Company

[Docket No. EL01–117–000]

Take notice that on September 24, 2001, Montana Power Company (Montana Power) filed a Petition for Declaratory Order in which it asked the FERC to issue an order declaring that (a) a customer who takes service pursuant to an unexecuted Network Integration Transmission Service Agreement is obligated to pay for such service as long as the service agreement remains on file at the FERC, and (b) billing demands for network integration transmission service under Montana Power's Open Access Transmission Service should be based on a rolling 12-month average of the customer's demands. Montana Power stated that copies of the Petition for Declaratory Order have been served upon Montana Resources and upon other network integration transmission service customers that may be similarly situated.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. CP&L Holdings, Inc.,

[Docket Nos. ER01–1520–003 and ER01–2966–001]

Take notice that on September 19, 2001, Progress Energy, Inc., on behalf of Carolina Power & Light Company (CP&L) and Florida Power Corporation (FPC), tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in these dockets requesting that the Commission include specific language in its order accepting for filing the August 23, 2001 revisions to their System Integration Agreement. Progress Energy states that the request is being made in compliance with an order of the North Carolina Utilities Commission in connection with the merger of the parent companies of CP&L and FPC.

Copies of the filing were served upon the Commission's official service list and the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment date: October 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Exelon Generation Company, LLC

[Docket No. ER01–3104–000]

Take notice that on September 25, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing with the Federal Energy Regulatory Commission (FERC or Commission), a power sales service agreement between Exelon Generation and Reliant Energy Services, Inc., under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Western Resources, Inc.

[Docket No. ER01–3105–000]

Take notice that on September 25, 2001, Western Resources, Inc. (WR), tendered for filing with the Federal Energy Regulatory Commission (Commission), a request for acceptance of three additional delivery points between WR and Kansas City Power & Light (KCPL), pursuant to an Interchange Agreement signed between the parties and made effective on July 26, 1965. WR states that the purpose of this filing is to ask for acceptance of the Spring Hill No. 2, Lake Quivira and Mur-Len delivery points. This filing is proposed to become effective September 26, 2001.

Copies of the filing were served upon KCPL and the Kansas Corporation Commission.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER01–3106–000]

Take notice that on September 25, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement for Long Term Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Exelon Generation Company, LLC [OASIS #170029] designated as Service Agreement No. 339 under the Company's FERC Electric Tariff, Second Revised Volume No. 5; and a Service Agreement for Long Term Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Exelon Generation Company, LLC [OASIS #170030] designated as Service Agreement No. 340 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreement, Dominion Virginia Power will provide long term firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. Dominion Virginia Power requests an effective date of January 1, 2002, the date requested by the customer.

Copies of the filing were served upon Exelon Generation Company, LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Tucson Electric Power Company

[Docket No. ER01–3108–000]

Take notice that on September 25, 2001, Tucson Electric Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement for Firm Point-to-Point Transmission Service by and between Tucson Electric Power Company and Tucson Electric Power Company Marketing Department.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Renaissance Power, L.L.C.

[Docket No. ER01–3109–000]

Take notice that on September 25, 2001, Renaissance Power, L.L.C. (Renaissance) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission), pursuant to Rule 205, 18 CFR Part 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 Commission.

Renaissance intends to sell electric power at wholesale rates, terms, and conditions to be mutually agreed to with the purchasing party. Renaissance's tariff provides for the sale of electric energy and capacity at agreed prices.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Tucson Electric Power Company

[Docket No. ER01–3111–000]

Take notice that on September 25, 2001, Tucson Electric Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a Power Sale Agreement by and between Tucson Electric Power Company and Navopache Electric Cooperative Inc.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. New York Independent System Operator, Inc.

[Docket No. ER01–3112–000]

Take notice that on September 25, 2001, the New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission), revisions to its Market Administration and Control Area Services Tariff (Services Tariff) and its Open-Access Transmission Tariff (OATT) to make permanent two temporary market rules pertaining to External Transactions that were initially implemented as ''Extraordinary Corrective Actions,'' and to introduce several new enhancements to its external transaction scheduling processes. The NYISO has requested a waiver of the usual sixty day notice period so that this filing can become effective on October 30, 2001.

The NYISO has served a copy of the filing on all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, to the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant California, LLC, Mirant Canal, LLC, Mirant Chalk Point, LLC, Mirant Delta, LLC, Mirant Kendall, LLC, Mirant Lovett, LLC, Mirant Mid-Atlantic, LLC, Mirant Neenah, LLC, Mirant New England, LLC, Mirant NY-Gen, LLC, Mirant Peaker, LLC, Mirant Potomac River, LLC, Mirant Potrero, LLC, Mirant Zeeland, LLC, State Line Energy, L.L.C.

[Docket No. ER01–3110–000]

Take notice that on September 24, 2001, the captioned parties (the Mirant Parties) submitted for filing with the Federal Energy Regulatory Commission (Commission), revised tariff sheets which would modify the Mirant Parties' existing Market Rate Tariffs: (1) to remove current restrictions on the Mirant Parties to engage in certain transactions with their former affiliates, effective April 2, 2001, and (2) to correct a clerical error in the market-based rate tariffs of three of the Mirant Parties. Further, the Mirant Parties request authority to terminate their respective Codes of Conduct.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER01–3107–000]

Take notice that on September 25, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission), the following Service Agreements with Sempra Energy Trading Corporation (Transmission Customer), Fourth Amended Service Agreement for Firm Point-to-Point Transmission Service designated Sixth Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, Second Revised Volume No. 5; and Fourth Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Sixth Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Company's Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. The Company requests an effective date of August 29, 2001, the date the customer first requested service.

Copies of the filing were served upon Sempra Energy Trading Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Energy

[Docket No. ER01–2160–001]

Take notice that on September 24, 2001, the APS Operating Companies (Allegheny Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) , a First Revised Service Agreement No. 10 pursuant to Commission's Order No. 614.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Camden Cogen, L.P.

[Docket No. ER01–2756–001]

Take notice that on September 24, 2001, Camden Cogen, L.P. (Camden) tender for filing with the Federal Energy Regulatory Commission (Commission), a revised tariff with provisions for reassignment of transmission capacity pursuant to Commission Order issued September 13, 2001.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. WPS Resources Operating Companies

[Docket No. ER01–2924–001]

Take notice that on September 26, 2001, WPS Resources Operating Companies (WPSR) tendered for filing with the Federal Energy Regulatory Commission (Commission), a modified version of its interconnection agreement and service agreement that it filed August 24, 2001 on behalf of Wisconsin Public Service Corporation (WPSC) in the above-referenced docket for service to Ag Environmental Solutions, LLC (AES). WPSR makes this modified filing only for the purpose of requesting a September 12, 2001 effective date for both agreements, and respectfully requests waiver of the Commission's notice requirements.

Copies of the filing were served upon AES, Wisconsin Electric Power Company and the Public Service Commission of Wisconsin.

Comment date: October 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24803 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3100–000, et al.]

PacifiCorp, et al.; Electric Rate and Corporate Regulation Filings

September 26, 2001.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER01–3100–000]

Take notice that on September 24, 2001, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission), in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Replacement Service Agreements for Long-term Firm Transmission Service with IDACORP Energy LP (IDACORP) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Richmond County Power, LLC

[Docket Nos. ER01–1417–003]

Take notice that on September 24, 2001, Richmond County Power, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission), a supplement to its compliance filing for authorization to sell energy, capacity and ancillary services at market-based rates.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Energy Atlantic, LLC

[Docket No. ER98–4381–006]

Take notice that on September 24, 2001, Energy Atlantic, LLC (Energy Atlantic) filed with the Federal Energy Regulatory Commission (Commission), an updated market analysis as required by the Commission's October 16, 1998 order in Docket No. ER98–4381–000 granting Energy Atlantic market-based rate authority.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. New York Independent System Operator, Inc.

[Docket No. ER01–2230–001]

Take notice that on September 21, 2001, the New York Independent System Operator, Inc. and the Members of the Transmission Owners Committee of the Energy Association of New York State, formerly known as the Member Systems of the New York Power Pool (Member Systems), tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in accordance with the Commission's July 31, 2001 Order in the above-captioned proceeding.

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s).

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PSEG Fossil LLC, PSEG Nuclear LLC and PSEG Energy Resources & Trade LLC

[Docket No. ER01–2462–002]

Take notice that on September 24, 2001, PSEG Fossil LLC, PSEG Nuclear LLC and PSEG Energy Resources & Trade LLC (collectively, the PSEG Companies), of Newark, New Jersey tendered for filing an amendment to the Joint Application for Waiver of Filing Requirements of the Federal Energy Regulatory Commission (Commission), pursuant to Section 35.8 of the Commission's regulations, 18 CFR 35.8 (2001).

This amendment is submitted in accordance with the Commission's August 24, 2001 Deficiency Letter providing further justification for the PSEG Companies' waiver request.

Copies of the filing have been served upon Old Dominion Electric Cooperative.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. DPL Energy, LLC

[Docket No. ER01–2483–001]

Take notice that on September 21, 2001 DPL Energy, LLC (DPL Energy) submitted for filing with the Federal Energy Regulatory Commission (Commission or FERC) in compliance with the requirements of the Commission's August 29, 2001 Letter Order in Docket No. ER01–2483–000 two rate schedules, DPL Energy, LLC First Revised FERC Rate Schedule No. 1 and DPL Energy, LLC First Revised FERC Rate Schedule No. 4, which have been revised to incorporate the designation information required by Order No. 614.

DPL Energy states that a copy of this filing has been served on each person designated on the official service list in Docket No. ER01–2483–000.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Michigan Electric Transmission Company

[Docket No. ER01–3075–001]

Take notice that on September 24, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission or FERC), a number of substitute tariff sheets as part of the pro forma Generator Interconnection and Operating Agreement (GIOA) which is part of Attachment J of Michigan Transco's FERC Electric Tariff No. 1. All of the changes are to correct errors made in the tariff sheet designation footers of sheets filed in this docket on September 17, 2001. Some supplemental explanatory materials were also included in the filing. The corrected sheets are:

Substitute First Revised Sheet Nos. 136, 137, 140, 145, 154, 156, 167 and 168 and Substitute Original Sheet Nos. 137A, 140A, and 145A.

The sheets are to have the same effective date of September 17, 2001 as

the sheets originally filed in this docket. A copy of the tariff sheets was served upon the Michigan Public Service Commission.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER01–3094–000]

Take notice that on September 21, 2001, PacifiCorp, tendered for filing with the Federal Energy Regulatory Commission (Commission), in accordance with 18 CFR 35 of the Commission's Rules and Regulations, one year Letter Agreements dated March 24, 1997 between San Diego Gas & Electric Company (San Diego) and PacifiCorp.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: October 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Cleco Power LLC

[Docket No. ER01–3095–000]

Take notice that on September 24, 2001, Cleco Power LLC (Cleco Power), tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation pursuant to 18 CFR 35.15, effective September 24, 2001, canceling Cleco Utility Group, Inc.'s Rate Schedule 1 and all supplements. Cleco Power simultaneously filed essentially the same rate schedule as Cleco Power's Rate Schedule 2. Cleco Power also requested an additional 90 days to comply with the Commission's orders in Cleco Power LLC, Docket Nos. ER01–1099–000 and ER01–1099–001, issued March 28, 2001, ER01–1099–002, issued June 18, 2001, and ER01–2147–000, issued July 24, 2001, instructing Cleco Power to bring all of its rate schedules and service agreements into compliance with the Commission's Order 614, issued March 31, 2000.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC (AE Supply

[Docket No. ER01–3096–000]

Take notice that on September 24, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (AE Supply), filed with the Federal Energy Regulatory Commission (Commission or FERC), First Revised Rate Schedule FERC No. 5 (First Revised Schedule) with the Potomac Edison Company dba Allegheny Power in order for Allegheny Power to continue to provide standard offer serve to it Maryland customers. AE Supply has requested a waiver of notice to make the First Revised Schedule effective on January 1, 2001.

Copies of the filing have been provided to the customer and to the Virginia State Corporation Commission.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER01–3097–000]

Take notice that on September 24, 2001, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission or FERC), in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Umbrella Service Agreements for Non-Firm and Short-Term Firm Transmission Service with Calpine Energy Services LP (Calpine), City of Klamath Falls (Klamath Falls), Exelon Generation Company, LLC (Exelon), and IDACORP Energy LP (IDACORP) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Cleco Power LLC

[Docket No. ER01–3098–000]

Take notice that on September 24, 2001, Cleco Power LLC (Cleco Power), tendered for filing with the Federal Energy Regulatory Commission (Commission), a service agreement under which Cleco Power will provide short-term firm point-to-point transmission service to Exelon Generation Company, LLC under its point-to-point transmission tariff.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER01–3099–000]

Take notice that on September 24, 2001, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission), in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Network Integration Transmission Service Agreements with Flathead Electric Cooperative, Inc. (Flathead) and Basin Electric Power Cooperative (Basin) under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. PPL Electric Utilities Corporation

[Docket No. ER01–3101–000]

Take notice that on September 24, 2001, PPL Electric Utilities Corporation (PPL Electric) filed with the Federal Energy Regulatory Commission an Interconnection Agreement between PPL Electric and Sight & Sound.

PPL Electric requests an effective date of July 27, 2001 for the Interconnection Agreement.

PPL Electric states that it has served a copy of this filing on Sight & Sound.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER01–3102–000]

Take notice that on September 24, 2001 Cinergy Services, Inc. tendered for filing a confirmation letter governing a long-term agreement with Wabash Valley Power Association, Inc. under the Cinergy Services Market-Based Sales Tariff—MB, FERC Electric Tariff Original Volume No. 7 and an Assignment and Assumption Agreement pursuant to which Cinergy Capital & Trading, Inc. assigned the Confirmation Letter to Cinergy Services with the express written consent of WVPA. The Assignment Agreement was executed on August 3, 2001, prior to the effective date of the Confirmation Letter.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24802 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2539–003]

Erie Boulevard Hydropower LP; Notice of Availability of Final Environmental Assessment

September 28, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the School Street Project located in Albany and Saratoga counties, New York, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has reviewed the comments on its November 20, 1996 Draft Environmental Assessment and analyzed the potential environmental impacts of the existing project. The FEA concludes that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference and Files Maintenance Branch, Room 2A of the Commission's offices at 888 First Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. The FEA may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

For further information, please contact Timothy J. Welch at (202) 219–2666.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24893 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Change in Project Boundary and Soliciting Comments, Motions To Intervene, and Protests

September 28, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Authorization to exchange certain Coosa River Project, H. Neely Henry Development lands with the City of Gadsden, Alabama and change the project boundary for the development of a home improvement center (Lowe's Building Supply Store).

b. *Project No.* 2146–092.

c. *Date Filed:* September 6, 2001.

d. *Licensee:* Alabama Power Company.

e. *Name of Project:* Coosa River Hydroelectric Project.

f. *Location:* On the Coosa River, in Calhoun, St. Clair and Etowah Counties, Alabama. This project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Licensee Contact:* Mr. Jim Crew, Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291. (205) 257–4265.

i. *FERC Contact:* Any questions on this notice should be addressed to Jean Potvin, jean.potvin@ferc.fed.us, or (202) 219–0022.

j. *Deadline for filing comments and or motions:* October 24, 2001.

All documents (original and eight copies) should be filed with Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. Comments, protests and interventions 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 under the ''e-Filing'' link.

k. Description of Proposal: This proposal includes: (1) The removal of 4.33 acres from project lands and the addition of 6.78 acres to the project; (2) fill 2.22 acres of wetlands and a borrow pit for the construction of this commercial development; (3) fill material will be discharged into the wetland areas to increase the site elevation by approximately 2 feet; (4) about 7,170 cubic yards of commercially obtained clean sand-clay material will be used at the site; and (5) mitigation for the proposal's impacts includes the placement of conservation easements on 1.38 acres of on-site wetlands and 20 acres of off-site wetlands.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling 202–208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the

Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24892 Filed 10–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01–99–000]

Presentation on the Benefits of a Combined Northeast Regional Transmission; Organization Notice of Presentation

September 28, 2001.

Take notice that Mirant Corporation (Mirant) will present a study prepared by Energy and Environmental Analysis Incorporated of Rosslyn, Virginia, on the benefits of a combined Northeast RTO. This study was recently published in the Sept. 1, 2001 issue of Public Utilities Fortnightly.

Mirant will present the study at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Two duplicate sessions are scheduled for Thursday, October 4, from 1:30–3:30 in the Commission Meeting Room, and Friday, October 5, from 9:30 to 11:30 in Rooms 3M–2A & B.

All interested persons are invited to attend, although seating is limited. Additional information about the presentation may be obtained by contacting Jo Tolley at (202) 208–1260.

Linwood A. Watson, Jr.,

Acting Secretary,

[FR Doc. 01–24896 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Road Communications; Public Notice

September 28, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Exempt

1. Project Nos. 20–000, 2401–000, 472–000, 8–17–01, John T. Gangemi
2. Docket No. CP01–22–000, *et al.,* 9–21–01, Gene Fisher
3. Docket No. CP98–150–000, *et al.,* Patricia A. Kurkul
4. Project Nos. 1975–000, 2061–000, 2777–000, 9–24–01, Susan Giannettino

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24894 Filed 10–3–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7071–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Superfund Site Evaluation and Hazard Ranking System

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ''Superfund Site Evaluation and Hazard Ranking System,'' OMB Control Number 2050–0095; expiring September 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 5, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1488.05 and OMB Control No. 2050–0095 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–4901, by e-mail at *Farmer.sandy@epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1488.05. For technical questions about the ICR contact Randy Hippen at EPA by phone at (703) 603–8829 or by e-mail at *Hippen.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Superfund Site Evaluation and Hazard Ranking System (OMB Control No.2050–0095; EPA ICR No. 1488.05) expiring September 30, 2001. This is a request for extension of a currently approved collection.

Abstract: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 1980 and 1986) amends the National Oil and Hazardous Substances Contingency Plan (NCP) to include criteria prioritizing releases

throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste sites. The Hazard Ranking System (HRS) is a model that is used to evaluate the relative threats to human health and the environment posed by actual or potential releases of hazardous substances, pollutants, and contaminants. The HRS criteria take into account the population at risk, the hazard potential of the substances, as well as the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive ecosystems, damage to natural resources affecting the human food chain, contamination of surface water used for recreation or potable water consumption, and contamination of ambient air.

Under this ICR, the States will apply the HRS by identifying and classifying those releases that warrant further investigation. The information collected under this ICR is required to help determine whether a site is eligible to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 26, 2001; no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to range from 44 to 1,870 hours per site depending on how far a site progresses through the site assessment process. Sites needing Pre-CERCLIS Screening and no other Superfund site assessment work will require an average of 44 hours per site, while sites progressing though all of the major phases of the site assessment process will require an average of 1,870 hours per site. 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.

Respondents/Affected Entities: States, Indian Tribes, and U.S. Territories performing Superfund site evaluation activities.

Estimated Number of Respondents: 60.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 230,533 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1488.05 and OMB Control No. 2050–0095 in any correspondence.

Dated: September 24, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–24898 Filed 10–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7071–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Submission for OMB Review; Comment Request; Reporting and Recordkeeping Requirements Under EPA's Natural Gas STAR Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ''Reporting and Recordkeeping Requirements under EPA's Natural Gas STAR Program,'' OMB Control Number 1736.03, and expiration date September 30, 2004. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 5, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1736.03 and OMB Control No. 2060–0328, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822),1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-Mail at *auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1736.03. For technical questions about the ICR contact Paul M. Gunning at 202–564–9736 or *gunning.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: ''Recordkeeping and Reporting Requirements under EPA's Natural Gas STAR Program.'' (OMB Control No. 2060–0328; EPA ICR No. 1736.03) expiring September 30, 2001. This is a request for extension of a currently approved collection.

Abstract: Natural Gas STAR is an EPA-sponsored, voluntary program that encourages natural gas companies to adopt cost effective methods for reducing methane emissions. Natural Gas STAR Partners agree to implement cost effective Best Management Practices (BMPs), which will both save participants money and improve the protection of the environment. EPA needs to collect information to establish program participation and to obtain general information on new Natural Gas STAR Partners. EPA also uses the information collection to evaluate a Partner's progress and performance, assess overall program results, and to develop technical materials to facilitate implementation. Participation in the Natural Gas STAR program is voluntary.

Natural Gas STAR Partners may designate information submitted under this ICR as confidential business information. EPA will treat all such information as confidential business information and will not make the company or agency-specific information collected under this ICR available to the general public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** notice required under 5 CFR

1320.8(d), soliciting comments on this collection of information was published on May 29, 2001, (66 FR 29126). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 41 hours per facility. 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.

Respondents/Affected Entities: Owners/operators of natural gas plants.

Estimated Number of Respondents: 98.

Frequency of Response: 120.

Estimated Total Annual Hour Burden: 4,059 hours.

Estimated Total Annualized Capital and Operating and Maintenance Cost Burden: $480.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1736.03 and OMB Control No.2060–0328 in any correspondence.

Dated: September 24, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–24899 Filed 10–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7074–3]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in *American Portland Cement Alliance* v. *U.S. Environmental Protection Agency,* No. 99–1322 (D.C. Cir.). This case concerns a challenge to the rule entitled National Emission Standards for Hazardous Air Pollutants for Source Categories: Portland Cement Manufacturing Industry, published in the **Federal Register** at 64 FR 31898 on June 14, 1999. The proposed settlement provides that EPA will propose revisions to the rule that would amend some of the provisions which implement the emission standards, and that EPA will make certain interpretive clarifications regarding the rule's applicability.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Phyllis Cochran, (202) 564–5566. Written comments should be sent to Steven Silverman, Office of General Counsel (2366A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and must be submitted on or before November 5, 2001.

Dated: September 26, 2001.

Alan W. Eckert,

Associate General Counsel.

[FR Doc. 01–24906 Filed 10–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7074–4]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has contracted with The Bionetics Corporation to provide assistance in the enforcement of regulatory requirements under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, from May 30, 2001, until May 31, 2006. The Bionetics Corporation has been authorized to have access to information submitted to EPA under these statutes that may be claimed and determined to be confidential business information.

DATES: This notice is effective October 4, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Ruske, Environmental Scientist, USEPA, Mail Code (2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–1033. Fax: (202) 564–1024. Internet mail address: *ruske.ross@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has authorized access for The Bionetics Corporation (''Bionetics''), a contractor, to information submitted to the EPA under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act. Some of this information may be claimed and determined to be confidential business information (''CBI''). The EPA contract number is 68–W–01–035.

The Bionetics corporate address is: The Bionetics Corporation, 11833 Canon Boulevard, Suite #100, Newport News, VA 23606.

Under the contract, Bionetics provides enforcement support to the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance in a number of activities primarily related to the Clean Air Act. The contractor may also be called upon to provide support to other EPA offices under the other statutes. The activities in which Bionetics provides enforcement support include, but are not limited to:

Inspections and audits of facilities that produce, import, store, transport, dispense or analyze motor vehicle fuel; and,

Inspections and audits of facilities that produce, distribute, sell or repair motor vehicles, motor vehicle engines, or non-road engines.

The type of information that may be disclosed includes, but are not limited to: Records related to the production, importation, distribution, sale, storage, testing and transportation of gasoline, gasoline blendstocks, diesel fuel, diesel fuel blendstocks, and detergent additives; and records related to the manufacture, importation, emission certification, emission testing, emission control warranty, repair, modification and fueling of motor vehicles, motor vehicle engines, non-road mobile source engines, and stationary source engines.

It is necessary for Bionetics to have access to these records in order to

prepare reports that EPA uses to evaluate whether regulated parties are in compliance with applicable regulatory requirements under the above listed statutes. Bionetics may be assisted in these activities by a subcontractor, Patterson & Associates of Houston, Texas, working under Bionetics subcontract No. 017–001.

In accordance with 40 CFR 2.301(h)(2), EPA has determined that disclosure of confidential business information to Bionetics and its subcontractor is necessary for these entities to carry out the work required by this contract. EPA is issuing this notice to inform all submitters of information to the EPA under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, that EPA may allow access to CBI contained in such submittals to Bionetics and their subcontractor as necessary to carry out work under this contract. Disclosure of CBI under this contract may continue until May 31, 2006.

As required by 40 CFR 2.301(h)(2), the Bionetics contract includes provisions to assure the appropriate treatment of CBI disclosed to contractors and subcontractors. Similar requirements are contained under 40 CFR 2.302(h), 40 CFR 2.305(h), and 40 CFR 2.306(j), for the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, respectively. The notice is intended to meet the requirements of these regulations as well.

Dated: September 28, 2001.

Bruce C. Buckheit,

Director, Air Enforcement Division.

[FR Doc. 01–24908 Filed 10–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–10010; FRL 6723–3]

Office of Environmental Information; Draft Data Standard for Exchange of Environmental Permitting Information and Draft Data Standard for Exchange of Enforcement and Compliance Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of information availability and request for comments.

SUMMARY: Notice of availability is hereby given for a 45-day public comment period on two draft data standards: Permitting Data Standard, and, Enforcement and Compliance Data Standard. These draft standards consist of a list of data elements, definitions for these elements, notes and explanatory preamble language. The draft standards were developed by the partnership efforts of States, Indian Tribes and the Environmental Protection Agency (EPA) participating in the Environmental Data Standards Council (EDSC). The EDSC convened Action Teams consisting of representatives from EPA, States and Tribes to develop these core sets of data elements to facilitate the sharing of information regarding environmental permitting and enforcement and compliance activities. The EPA and the EDSC invite comment on these standards from States, EPA and Tribes and database managers in the public and private sectors and the general public with interest in development and use of environmental program permitting and enforcement and compliance data.

DATES: Comments must be submitted on or before November 19, 2001.

ADDRESSES: Electronic Access and Filing of Comments—You may view and download the draft data standards and related explanatory material at the EDSC Website at: *http://www.epa.gov/edsc/* in the area of the site marked ''Announcements''. The draft data standards can also be viewed and downloaded at the EPA Environmental Data Registry (EDR) at *http://www.epa.gov/edr/* in the area of the site marked ''Data Standards''. Or for those with password access, at the WISER portion of the State/EPA Website at: *http://www.sso.org/ecos/wiser/*

You may submit comments via electronic mail (e-mail) to William Sonntag (*sonntag.william@epa.gov*) as a WordPerfect or Word file avoiding the use of special characters and any form of encryption. Comments may also be mailed to: OEI Docket; USEPA, 401 M. Street SW Washington, DC. 20460, Docket Number: OEI–10010:FRL 6723–3. If you require a paper copy be sent to you, you must contact the OEI Docket; USEPA, 401 M. Street, SW, Washington, DC. 20460, Docket Number: OEI–10010:FRL 6723–3.

FOR FURTHER INFORMATION CONTACT: For additional information concerning today's Notice you may contact: William A. Sonntag, Office of Environmental Information, Office of Information Collection, MC–2822, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington DC 20460 (202 260–0633).

SUPPLEMENTARY INFORMATION:

I. Environmental Data Standards Council (EDSC) Background

Data sharing has become an increasingly important aspect of sound environmental management. States, Tribes and the Environmental Protection Agency (EPA) together face the critical challenge of sharing information among themselves and with their respective stakeholders and public. Fundamental to the seamless exchange of data are data standards. Data standards help improve the ability of partners (internal and external) to exchange data efficiently and accurately and also assist secondary users of data to understand, interpret, and use data appropriately. Recognition of the need for EPA, States and Tribes to develop and agree upon data standards for environmental information sharing has lead to the creation of the Environmental Data Standards Council (EDSC). Data standards are documented agreements on formats and definitions of data elements. Standards will be developed only when there is an environmental management business reason.

The EDSC's mission is to promote the efficient sharing of environmental information between EPA, States, Tribes and other parties through the development of data standards. The EDSC identified permitting, and enforcement and compliance as areas of information for which having standards will create value to all interested parties. An Action Team deliberation process bringing together State, EPA and Tribal parties began in August 2000 for these two standards areas. Draft standards were delivered to the EDSC for consideration in June 2001 and approved for initiation of this 45-day public comment period in September 2001.

After the comment period announced in this Notice, the EDSC and its Action Teams will review comments received and make appropriate modifications. The EDSC will then consider and approve of these data standards as appropriate. EDSC approval does not bind an individual agency to using a standard. It will be up to the individual agency to determine if, when, and how it might use a standard developed under the auspices of the EDSC. It will be the intent of EPA to adopt and implement the consistent use of EDSC-approved standards in its information systems and programs.

II. Enforcement & Compliance Draft Data Standard Background

The Environmental Data Standards Council (EDSC) chartered the

Enforcement and Compliance Data Standard Action Team to identify and define the major areas of enforcement and compliance information, and to develop a data standard that could be used for the exchange of data among environmental agencies and other entities. The purpose of the standard is to provide a common vocabulary or lexicon, so that information about functionally similar activities and/or instruments can be shared. The proposed standard focuses on core information common across most program areas. The draft standard is not intended to constrain what information an agency chooses to collect, nor does it constitute a reporting requirement. It merely defines a standardized way to organize and exchange key information if agencies choose to exchange that information.

The draft Enforcement/Compliance Data Standard, contains (1) the enforcement data element matrix, (2) the compliance assistance data element matrix, and (3) commonly used enforcement and compliance terminology. It is important to note that the compliance assistance data element matrix is presented as separate and distinct from the enforcement data element matrix/standard. The compliance assistance data element matrix deals with an area of information that is not currently, routinely exchanged. It does not have a basis in long established practice and program to program data exchange. It is included for comment in the Notice as a way to receive State and other data exchange partner reaction to its form and impact on systems as an area of potential new data exchange. Please see the additional discussion of this matter found in the materials at the websites referenced above.

III. Permitting Data Standard

The EDSC chartered the Permitting Data Standard Action Team to identify and define the major areas of permitting information and to develop a data standard that could be used for the exchange of permitting data among environmental agencies and other entities The proposed Permit Data Standard is not intended to be a system design or to cover every detail of permitting data that are currently exchanged or managed; instead, it focuses on core information common across most program areas and organizations. The draft standard is not intended to constrain what information an agency chooses to collect, nor does it constitute a reporting requirement. It merely defines a standardized way to organize and exchange key information if agencies choose to exchange that information.

This standard is designed to provide simple, high-level information that includes core data sufficient to identify a permit, as well as some information on administrative status and history, that is common across most organizations and programs. The standard does not contain more detailed information that is program specific. Standardization of this program specific data should be accomplished via the development of program-specific standards (consistent with this overall standard) and/or the development of Data Exchange Templates between information exchange partners. A ''permit'' is a permit, authorization, license, or equivalent used to implement the requirements of an environmental regulation. A permit is issued to an individual or organization and typically specifies pollutant discharge limits or operating procedures.

III. Review of Draft Standards To Date

These draft standards have received significant input through the representatives from EPA program, States and Tribal organizations serving on the development Action Teams. In addition, the preliminary versions of the draft standards have been reviewed by State and EPA programs managers in May and June 2001. EDSC members have also reviewed and recommended these draft standards for this public comment process.

Dated: September 28, 2001.

Mark Luttner,

Director, Office of Information Collection, Office of Environmental Information.

[FR Doc. 01–24907 Filed 10–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7069–9]

Amendment to Proposed Administrative Cashout Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Beede Waste Oil Superfund Site, Plaistow, NH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of amendment to proposed administrative settlement and request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9622(i), notice is hereby given of an amendment to the proposed administrative settlement for recovery of past and projected future response costs concerning the Beede Waste Oil Superfund Site in Plaistow, New Hampshire with the settling parties listed in the Supplementary Information portion of this notice. A notice for public comment for the proposed administrative settlement, which is embodied in a CERCLA section 122(g) Administrative Order on Consent (''AOC''), was published in the **Federal Register** on September 13, 2001 (Volume 66, Number 178) (66 FR 47670). This amendment is to add three additional settling parties listed in the Supplementary Information portion of this notice and to amend the aggregate total to approximately $1,662,814.40. For thirty (30) days following the date of publication of this amendment, the EPA will receive written comments relating to this amended notice of settlement. The EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023 (Telephone Number: 617–918–1440).

DATES: Comments must be submitted on or before November 5, 2001.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023. Please call 617–918–1440 to schedule an appointment. A copy of the proposed settlement may be obtained from Kristin Balzano, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023 (Telephone Number: 617–918–1772). Comments should reference the Beede Waste Oil Superfund Site in Plaistow, New Hampshire and EPA Docket No. CERCLA–1–2001–0041 and should be addressed to Kristin Balzano, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023.

FOR FURTHER INFORMATION CONTACT: Cindy Lewis, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023 (Telephone Number: 617–918–1889).

SUPPLEMENTARY INFORMATION: The following is a list of the additional settling parties: D&Z Auto Repair, East

Derry Garage Inc. d/b/a Dave Allen Lincoln-Mercury, and Sorco Corporation.

Dated: September 25, 2001.

Richard Cavagnero,

Deputy Director, Office of Site Remediation and Restoration, Region I.

[FR Doc. 01–24897 Filed 10–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7071–9]

Notice of Proposed NPDES General Permit for Egg Production Operations in New Mexico, Oklahoma, and on Indian Lands in New Mexico and Oklahoma NMG800000 and OKG800000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft NPDES general permits.

SUMMARY: EPA Region 6 is proposing to issue a general NPDES permit regulating discharges, or potential discharges, from egg production operations (EPOs). The United Egg Producers (UEP), a farmer cooperative that represents egg producers nationwide, has entered into an XL project agreement with EPA. This XL project will allow eligible EPOs to obtain permit coverage under a general permit, as an incentive for the industry's large producers to maintain environmentally superior facilities, if they implement a multi-media environmental management system (EMS). An EMS controls a range of significant environmental impacts including those not subject to regulation under the Clean Water Act, such as odor and pest control. Facilities that do not continue to comply with their general permit or do not adequately implement their EMS could be required to obtain individual NPDES permits. The project also includes a third-party auditing component and on-farm management practices most likely to result in superior environmental performance. Each facility's EMS will be required to pass the independent third-party audit before the facility can apply for coverage under the general permit.

DATES: Comments on this proposed permit must be submitted by December 3, 2001.

ADDRESSES: Comments on this proposed permit should be sent to the Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2145. Copies of the complete fact sheet and proposed permit may be obtained from Ms. Smith. The fact sheet and proposed permit can also be found on the Internet at *http://www.epa.gov/earth1r6/6wq/6wq.htm.* In addition, the current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Smith 24 hours advanced notice.

Public Meetings

Public meetings on the proposed permit will be held at the locations listed below. The public meetings will include a presentation on the draft permit and a question and answer session. Written, but not oral, comments for the official permit record will be accepted at the public meetings.

Albuquerque, NM: November 1, 2001, 7 p.m. at the Albuquerque Technical Vocational Institute Workforce Training Center, Conference Room 106, 5600 Eagle Rock Ave. NE, Albuquerque, NM 87113.

Oklahoma City, OK: November 7, 2001, 7 p.m; at the Metro Tech Business Conference Center, Big Dipper Conference Room, 1900 Springlake Drive, Oklahoma City, OK 73111.

Public Hearings

EPA has not scheduled any public hearings to receive public comment concerning today's proposal. All persons will continue to have the right to provide written comments at any time during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

SUPPLEMENTARY INFORMATION: Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Operators of egg production operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in part I, section A.1 of this permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314 and 1341). Those statutory provisions require that NPDES permits include effluent limitations requiring that authorized discharges: (1) meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

A. National Technology Guidelines

National guidelines establishing Best Available Technology (BAT) and New Source Performance Standards have been promulgated for certain sizes and types of facilities in the Feedlots Point Source Category and are codified at 40 CFR part 412. For laying hen operations, these guidelines apply to facilities having the capacity for 100,000 or more laying hens when the facility has unlimited continuous flow watering systems, and facilities having the capacity for 30,000 or more laying hens when the facility has liquid manure handling systems. The facilities potentially eligible to participate in this XL project have neither unlimited continuous flow watering systems nor liquid manure handling systems. These facilities have dry manure storage and

handling systems and do not use unlimited continuous flow watering systems. There are, therefore, no guidelines establishing BAT and New Source Performance Standards for the facilities potentially eligible for participation in this XL project, so these facilities will not meet the definition of new source in 40 CFR 122.2.

B. Project XL

Project XL, which stands for ''eXcellence and Leadership,'' is a national initiative that tests innovative ways of achieving better and more cost-effective public health and environmental protection. The information and lessons learned from Project XL are being used to assist EPA in redesigning its current regulatory and policy-setting approaches. Project XL encourages testing of cleaner, cheaper, and smarter ways to attain environmental results superior to those achieved under current regulations and policies, in conjunction with greater accountability to stakeholders. It is vital that each project tests new ideas with the potential for wide application and broad environmental benefits.

C. United Egg Producers XL Project

The United Egg Producers (UEP), a farmer cooperative that represents egg producers nationwide, has entered into an XL project agreement with EPA to provide a comprehensive program to bring egg-producing facilities under NPDES permits faster, and help participating egg-producing facilities achieve superior environmental performance by implementing an environmental management system (EMS). This XL project allows these facilities to obtain permit coverage under a less costly and complex mechanism; i.e., a general permit and an EMS-based program tailored to the needs of the egg-laying industry, as an incentive for the industry's large producers to maintain environmentally superior facilities and practices. Facilities that do not continue to comply with their general permit or do not adequately implement their EMS could be required to obtain individual NPDES permits. This project was developed by a workgroup comprised of EPA, UEP members, several states, non-governmental organizations, and U.S. Department of Agriculture. The XL project final agreement was signed on October 25, 2000.

The XL project agreement requires participating facilities not only to comply with the terms of an NPDES general permit, but also to implement a multi-media EMS that controls a range of significant environmental impacts including those not subject to regulation under the Clean Water Act, such as odor and pest control. The project also includes a third-party auditing component and on-farm management practices most likely to result in superior environmental performance. Each facility's EMS will be required to pass the independent third-party audit before the facility can apply for coverage under the general permit. Information on audit results will be provided to the appropriate regulatory authorities and will be available to local stakeholders. Ongoing audits will be conducted to ensure continuing implementation of the EMS, and audit results will be available to the public.

D. Requirements for Obtaining Coverage

Owners/operators of EPOs seeking to be covered by the permit general permit must submit: (1) A notice of intent (NOI) to be covered by this permit; (2) evidence that the EPO has developed and implemented an EMS consistent with the guidelines set forth in the permit; (3) the results of a successful audit conducted by an independent third party for the purpose of applying for this permit; and (4) evidence that the EPO: Has placed a notice in the local newspaper that indicates the EPO has passed the audit and intends to submit the NOI, has sent the notice directly to local stakeholders, and has established a point of contact at the facility for public inquiries. Owners/operators of new EPOs must submit an NOI, have a complete comprehensive nutrient management plan (CNMP) and an EMS 180 days prior to commencement of operation.

E. Egg Producing Operations Not Eligible for Coverage

The following EPOs are not eligible for coverage under this NPDES general permit:

1. EPOs that have failed an audit by an independent third party or been notified by EPA to apply for an individual NPDES permit.
2. EPOs that have been notified by EPA that they are ineligible for coverage because of a past history of non-compliance.
3. New and/or significantly expanding EPOs that apply manure and/or wastewater to lands that are adjacent to bodies that are listed under the Clean Water Act, section 303(d), as impaired due to inadequate oxygen, excessive nutrients, suspended solids, turbidity and/or pathogens and are notified by the EPA to apply for an individual NPDES permit. A significantly expanding EPO means one which meets the criteria of 40 CFR 122.29(b)(1)(i), (ii) and/or (iii); although, as discussed above, such facilities do not meet the definition of new source in 40 CFR 122.2.
4. EPOs which have liquid manure handling systems and/or unlimited continuous flow watering systems.
5. Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places.

F. Effluent Limitations

The following effluent limitations apply to EPOs covered under this general permit, and cover both the production and the land application areas under the control of the EPO:

1. *Production Areas:* There shall be no discharge of process wastewater pollutants to waters of the United States, except when a catastrophic rainfall event causes an overflow of process wastewater from a facility properly designed, constructed, maintained, and operated to contain:

a. All process generated wastewater resulting from the operation of the EPO; plus,

b. All runoff from a 25 year, 24-hour rainfall event for the location of the EPO.

2. There shall be no discharge of process wastewater pollutants from retention or control structures to groundwater that has a direct hydrologic connection to waters of the United States.

3. *Land Application Area:* For discharges associated with land application of process wastewater and/or manure under the control of the EPO operator, including discharges to groundwater that has a direct hydrologic connection to waters of the United States:

a. The EPO must ensure that such activities comply with the requirements of Minimum Standard 9 (see section G.9, below).

b. There shall be no discharge of manure and/or process wastewater from land application areas.

G. Minimum Standards to Protect Water Quality in NPDES Permits for EPOs

Each of the following minimum standards is designed to achieve the objective of preventing discharge of pollutants to waters of the U.S. and from land application activities under the operational control of the EPO. Minimum requirements or portions of minimum requirements that must be implemented on the effective date of the permit are identified with an asterisk (*).

1. Minimum Standard—Buffers or Equivalent Practices

Provide and maintain buffer strips or other equivalent practices near the animal confinement areas, manure storage areas, and land application areas that are sufficient to minimize the discharge of pollutants to waters of the U.S. (e.g., soil erosion and manure and wastewater). These practices may include but are not limited to: residue management, conservation crop rotation, grassed waterways, strip cropping, vegetative buffers, terracing, and diversion.

2. Minimum Standard—Divert Clean Water

* Design and implement management practices to divert clean water and runoff waters from contact with the animal confinement areas; animal manure; or manure and/or process wastewater storage systems. Clean water and runoff waters includes rain falling on the roofs of facilities, runoff from adjacent land, or other sources.

3. Minimum Standard—Prevent Direct Contact of Animals With Waters of the U.S.

* Develop and implement appropriate controls to prevent direct access of animals in confinement to waters of the U.S. to protect water quality.

4. Minimum Standard—Animal Mortality

* Handle and dispose of dead animals in a manner that prevents contamination of surface waters of the U.S. (including contamination of groundwater with a direct hydrological connection to surface waters).

5. Minimum Standard—Chemical Disposal

* Prevent introduction of chemicals into manure and wastewater storage structures for purposes of disposal. Examples include pesticides, hazardous and toxic chemicals, and petroleum products/by-products.

6. Minimum Standard—Proper Operation and Maintenance

* Implement an operation and maintenance program to minimize the discharges of pollutants to surface water and groundwater that is hydrologically connected to surface water that involves periodic visual inspection and maintenance of all manure storage and handling equipment and structures and all runoff management devices (e.g., cleaning separators, barnyards, catch basins, screens, annual testing and calibration of land application equipment to ensure proper application rates and maintenance of filter strips).

7. Minimum Standard—Recordkeeping and Testing

* Maintain a log that documents the visual inspections, findings, preventative maintenance, testing, and calibration that has been performed.

* Document the date, rate, location, types of crops, and methods used for application of manure and wastewater, as well as other nutrients, to land under the control of the EPO operator.

Where manure and wastewater are not applied on land under the operational control of the EPO operator, maintain a record of the transfer of the manure off-site.

* Record the results of annual manure and wastewater sampling to determine nutrient content.

* Record the results of representative soil sampling and analyses conducted at least every three years to determine nutrient content.

8. Minimum Standard—Maintain Proper Storage Capacity

* Maintain sufficient freeboard in liquid manure/wastewater storage structures to assure compliance with the permit conditions.

* Store dry manure in production buildings or in storage facilities or in another as to prevent polluted runoff, (e.g, located on relatively flat land, away from waterbodies, wetlands and wells, and/or surrounded by a berm or buffer).

Provide adequate storage capacity so that land application occurs only during periods when land or weather conditions are suitable for manure and wastewater application (see Minimum Standard #9, below).

9. Minimum Standard—Rates and Timing of Land Application of Manure and Wastewater

* Land apply manure and/or wastewater in accordance with proper agricultural practices.

Land apply manure and/or wastewater in accordance with land application rates developed on a site-specific basis as needed to protect water quality. At a minimum, land application rates should (1) prevent application of nutrients at rates that will exceed the capacity of the soil and the planned crops to assimilate nutrients and minimize water pollution; and (2) be quantified and based on the most limiting nutrient in the soil (e.g., phosphorus or nitrogen), type of crop, realistic crop yields, soil type, and all nutrient inputs in addition to those from manure and wastewater.

Incorporate manure applied to the bare soil surface within 24 hours after land application.

* Land application of manure and/or wastewater is prohibited on land that is flooded, saturated with water, frozen or snow covered (unless approved conservation measures of a certified CNMP are in place to prevent off-site movement of contaminated water) at the time of land application where the manure and/or wastewater may enter waters of the U.S.

* Land application of manure and/or wastewater is prohibited on land with slopes greater than 6 per cent unless approved conservation measures of a certified CNMP are in place to prevent off-site movement of contaminated water.

* Land application of manure and/or wastewater is prohibited during the period of November 15 through April 15 on land with slopes greater than 3 per cent unless approved conservation measures of a certified CNMP are in place to prevent off-site movement of contaminated water.

*Land application of manure and/or wastewater is prohibited during rainfall events and for 24 hours prior to a 60 per cent forecasted rainfall event of ¼ inch or more.

H. Comprehensive Nutrient Management Plan (CNMP)

1. Elements of a CNMP

Each EPO covered by this permit shall develop and implement a site-specific CNMP that includes the following elements as appropriate to the needs and circumstances of the permitted facility: animal outputs; manure handling and storage; land application of manure and wastewater; site management; record keeping; and other manure and/or wastewater utilization options. The CNMP must be developed and implemented to meet all of the Minimum Standards to Protect Water Quality that are applicable to the permitted facility. The CNMP must be developed and implemented to meet the requirements of the CWA, current State and U.S. Department of Agriculture-Natural Resources Conservation Service (NRCS) technical standards and NRCS's CNMP Technical guidance.

2. Schedule for Developing, Submitting, and Implementing a CNMP

a. For existing EPO facilities—Following the submission of the NOI, any existing EPO covered by this NPDES general permit shall develop and implement a CNMP no later than 2 years after the effective date of this general permit. The permittee must

notify the permitting authority in writing within thirty days following the completed development of the site-specific CNMP.

b. For EPO facilities constructed after the effective date of this permit—New EPOs must have developed a CNMP at least 180 days prior to commencement of operation.

c. For existing EPOs having significant expansions, constructed after the effective date of this permit, a CNMP (or revised CNMP) addressing the expansion must be developed at least 180 days prior to commencement of operation of the expansion.

I. Management Practices

1. *Emergency Discharge Impact Abatement:* Authorized discharges (see section F, Effluent Limitations, above) must, where practicable, be released to vegetated fields for filtering or captured in secondary containment to minimize discharge to waters of U.S.

2. *Irrigation Control:* Irrigation systems shall be managed so as to reduce or minimize: (1) Ponding or puddling of wastewater on land application fields; and (2) contamination of ground and surface water.

3. *Spills:* Appropriate measures necessary to prevent spills and to clean up spills of any toxic and other pollutants shall be taken. If possible spills are anticipated, materials handling procedures and storage must be specified in the CNMP. Procedures for cleaning up spills shall be identified, and the necessary equipment to implement clean up shall be made available to facility personnel. All spills resulting in actual or potential to discharge to waters of th U.S. must be reported to EPA and State/Indian Tribe authorities.

4. *Measurement of Rainfall:* A rain gauge meeting National Weather Service standards or its equivalent shall be kept on site of all EPOs which collect egg wash wastewater in uncovered lagoons or basins or which practice land application of manure or egg wash wastewater. A log of all measurable rainfall events shall be kept by the EPO operator/owner.

5. *Liner Requirement:* Where a direct hydrologic connection through ground water exists, the ponds, lagoons and basins of the retention structure must have a liner which will prevent the potential contamination of surface waters.

6. *Employee Training:* Where employees are responsible for work activities which relate to permit compliance, those employees must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Training shall include topics as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary record-keeping requirements, and spill response and clean up. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the CNMP shall identify periodic dates for such training. This training program must also be included in the EMS.

7. *Chemical Handling:* The owner/operator shall prevent the discharge of pesticide-contaminated waters into retention structures. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the management of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent pollutants from entering the retention structures or waters of the United States.

8. *Discharges of Chemicals to Containment Structures:* All discharges to containment structures shall be composed entirely of wastewater from the proper operation and maintenance of an EPO and the precipitation runoff from the EPO areas. The disposal of any materials (other than materials and discharges associated with proper operation and maintenance of the EPO) into the containment structures is prohibited by this permit.

9. *Siting and Structural Integrity:* Site and construct new facilities so as to comply with applicable State and/or local requirements. In the absence of applicable State and/or local requirements, new facilities must be constructed to meet NRCS, ASCS, or equivalent engineering and construction standards. Existing facilities must be checked and maintained to ensure their structural integrity, and that they are appropriately sized for egg-producing operations.

10. *Facility Closure:* The following conditions shall apply to the closure of egg washing storage structures and other litter and wastewater facilities:

a. *Closure of Egg Washing Wastewater Storage Structures*

No egg washing wastewater storage structure shall be permanently abandoned without proper closure.

Egg washing wastewater storage structures shall be maintained at all times until closed in compliance with this section.

Egg washing wastewater storage structures must be properly closed if the permittee ceases operation. In addition, any egg washing wastewater storage structure that is not in use for a period of twelve consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: (1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (2) removes manure and wastewater to a depth of one foot or less and maintains a depth of wastewater sufficient to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall notify the EPA of the action taken, and shall conduct routine inspections, maintenance, and record-keeping as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify the EPA and provide the opportunity for inspection.

All closure of lagoons and other earthen or synthetic lined basins must be consistent with NRCS standards (currently, Field Technical Guide No. 998, Interim Standard for Closure of Abandoned Waste Treatment Lagoons and Waste Storage Ponds). Consistent with NRCS standards, the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's CNMP, unless otherwise authorized by the EPA. If the permittee plans to land apply lagoon sludge, the CNMP should have special conditions for such application based on the most limiting contaminant in the waste.

Unless otherwise authorized by the EPA, completion of closure for egg washing wastewater storage structures shall occur as promptly as practicable after the permittee ceases to operate or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements above.

b. *Closure Procedures for Manure and Other Wastewater Facilities*

No manure or other wastewater control and retention structure shall be abandoned. Closure of all such structures shall occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within 12 months after the date on which the use of the structure ceased. To close a manure or wastewater control and retention structure, the permittee shall remove all manure and wastewater and dispose of it in accordance with the permittee's CNMP, unless otherwise authorized by the EPA.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The proposed permit contains limitations and requirements intended to ensure compliance with state water quality standards and has been determined by EPA Region 6 to be consistent with the applicable state's water quality standards and the corresponding implementation plans. The Region has solicited certification from the States of New Mexico, Oklahoma, and the Pueblos of Acoma, Isleta, Nambe, Picuris, Pojoaque, Sandia, San Juan, Santa Clara, and Tesuque.

B. Endangered Species Act

EPA Region 6 has determined that issuance of this general permit is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA made this determination for the following reasons:

The permit specifically excludes operations having either continuous overflow watering or liquid manure handling. EPOs covered by this permit must comply with the permit requirements which include a prohibition on discharges of process wastewater pollutants except during catastrophic rainfall events from properly designed, constructed, maintained and operated facilities. Discharges during chronic rainfall events are prohibited. These EPOs will also be subject to the numerous other requirements designed to assure proper operation of the animal confinement areas, storage facilities and unloading/handling areas of manure or egg wash water. Additionally, the permit requirements will assure that manure and wastewater is properly applied at an agronomic rate to minimize the contamination of rainwater falling on the land application site. EPOs covered by this permit will be subject to the additional requirement to implement a multi-media environmental management system that controls a range of environmental impacts, including those not subject to regulation under the Clean Water Act, such as odor and pest control.

EPA is seeking written concurrence from the United States Fish and Wildlife Service on this determination.

C. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

D. Economic Impact (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

E. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

F. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As discussed below, the permit being proposed to be reissued is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Coastal Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by these permits. EPA Region 6 therefore concludes that the permits proposed today will not have a significant impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (*See, e.g., UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law*)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law * * *''

NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act (CWA). While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA thinks it is unlikely that this proposed permit issuance would contain a Federal requirement that might result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The Agency also believes that the proposed permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (See UMRA section 102(1), referencing 2

U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition. The proposed permit issuance also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

Dated: September 26, 2001.

Sam Becker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 01–24904 Filed 10–3–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

September 28, 2001.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0355.

Expiration Date: 07/31/2004.

Title: Rate of Return Reports.

Form No.: FCC Forms 492 and 492A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 113 respondents; 8 hours per response (avg.).; 904 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion, Annually, Recordkeeping.

Description: Section 65.600 of the FCC Rules requires filing of FCC Form 492 and FCC Form 492A. Filing of the FCC Form 492 on an annual basis is required from each local exchange carrier or group of affiliated carriers, which is not subject to sections 61.41 through 61.49 of the Commission's Rules and which has filed individual access tariffs during the enforcement period. Each local exchange carrier or group of affiliated carriers subject to the previously stated sections shall file the FCC Form 492A report with the Commission for the calendar year. These carriers are also required to file within 15 months after the end of each calendar year a report reflecting any corrections or modifications. The forms are necessary to enable the Commission to monitor the access tariffs and price-cap earnings, and to enforce rate-of-return prescriptions. A copy of each report must be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection. The data are used by staff members for enforcement purposes and by the public in analyzing the industry. The reports are also used by the Commission in the tariff review process and provide both the Commission and the carriers with an early warning system if rate adjustments are necessary to correct significant targeting errors. Copies of the forms and instructions may be downloaded from the Commission's forms Web page (*www.fcc.gov/formpage.html*). Copies may also be obtained by either writing to the Commission's Forms Distribution Center, 9300 E. Hampton Drive, Capital Heights, Maryland 20431, or by calling telephone number 1–800–418–3676 and leaving a request on the answering machine provided for this purpose. Obligation to respond: Mandatory.

OMB Control No.: 3060–0814.

Expiration Date: 03/31/2002.

Title: Section 54.301, Local Switching Support and Local Switching Support Data Collection form and Instructions.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 195 respondents; 19.4 hours per response (avg.); 3787 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Annually; Third Party Disclosure; Recordkeeping.

Description: The Telecommunications Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. To fulfill that mandate, on March 8, 1996, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96–45 to implement the congressional directives set out in section 254 of the Communications Act of 1934, as amended by the 1996 Act. On May 8, 1997, the Commission released the Report and Order on Universal Service (Universal Service Order) in CC Docket 96–45 that established new federal universal service support mechanisms consistent with the universal service provisions of section 254. In the Fourth Order on Reconsideration in CC Docket No. 96–45, Report and Order in CC Docket Nos. 96–45, 96–262, 94–1, 91–213, 95–72 (adopted December 30, 1997, released December 30, 1997), the Commission reconsidered certain aspects of the Universal Service Order. Among other things, the Fourth Order on Reconsideration adopted a precise methodology for the universal service administrator to use in calculating the average unseparated local switching revenue requirement. Pursuant to 47 CFR section 54.301(a) through (e)—Local Switching Support, each incumbent local exchange carrier that is not a member of the NECA Common Line tariff that has been designed an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, must provide the Administrator with the projected total unseparated dollar amount assigned to each account in section 54.301(b). Pursuant to 47 CFR 54.301(a) through (f)—Local switching support, each incumbent local exchange carrier that is not a member of the NECA Common Line tariff, that is an average schedule company, that has been designated an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the total number of access lines, total number of central offices, and projected access minutes. This information is necessary so that the universal service administrator may comply with section 54.301(f) of the Commission's rules. Section 54.301(f) provides that, consistent with the Commission's treatment of average schedule companies, the universal service administrator should develop ''a formula that simulates the disbursements that would be received pursuant to this section by a company that is representative of average schedule companies.'' 47 CFR 54.301(f). Carriers are required to file true up data. *See* 47 CFR 54.301(e). Carriers must file this information within 12 months after the initial report. The universal service administrator, USAC, has developed a form to collect the information specified in the Commission's rules. Copies of the forms and instructions may be obtained from the Administrator by calling 202–776–0200. Copies of the form and instructions may also be downloaded

from the Administrator's Web page (*www.universalservice.org*). This data request is necessary to calculate the average unseparated local switching revenue requirement. This revenue requirement calculation is necessary to calculate the amount of local switching support that carriers will receive. Obligation to respond: Mandatory.

OMB Control No.: 3060–0824.

Expiration Date: 09/30/2004.

Title: Service Provider Information Form.

Form No.: FCC Form 498.

Respondents: Business or other for-profit.

Estimated Annual Burden: 10,000 respondents; 1 hours per response (avg.); 10,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure; Recordkeeping.

Description: The Telecommunications Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. To fulfill that mandate, on March 8, 1996, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96–45 to implement the congressional directives set out in section 254 of the Communications Act of 1934, as amended by the 1996 Act. In connection with this proceeding, the Commission appointed the Universal Service Administrative Company (USAC) as temporary administrator of certain portions of the universal service support mechanisms, including portions of schools and libraries and rural health care programs. One of the functions of USAC is to provide a mechanism for the billing and collection of funds for the schools and libraries and rural health care programs. Pursuant to sections 54.515 and 54.611 of the Commission's rules, 47 CFR 54.515 and 54.611, USAC must obtain information relating to: Service provider name and address, telephone number, Federal employer identification number, contact names and telephone numbers, and billing and collection information. To that end, USAC developed a Service Provider Information Form, FCC Form 498, to collect this information from carriers and service providers participating in the programs. FCC Form 498 is necessary to implement the congressional mandate for universal service. FCC Form 498 is necessary to make payments to telecommunications carriers and providers of eligible support services. Copies of the forms and instructions may be obtained from the Administrator by calling 202–776–0200. Copies of the form and instructions may also be downloaded from the Administrator's Web page (*www.universalservice.org*). Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0804.

Expiration Date: 09/30/2004.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 466–A, 467, and 468.

Respondents: Not-for-profit institutions; Business or other for-profit.

Estimated Annual Burden: 5255 respondents; 1.8 hours per response (avg.); 9755 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Description: The Telecommunications Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking reform to our system of universal service so that universal service is preserved and advanced as markets move toward competition. To fulfill that mandate, on March 8, 1996, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96–45 to implement the Congressional directives set out in section 254 of the Communications Act of 1934, as amended by the 1996 Act. On May 8, 1997, the Commission adopted rules providing, among other things, that rural health care providers receive access to advanced telecommunications services at rates that are reasonably comparable to those available in urban areas. All rural health care providers planning to order eligible telecommunications services at discounted rates under the universal service program must file FCC Forms 465, 466, 466–A, 467 and 468. a. FCC Form 465, Description of Service Requested and Certification. Rural health care providers ordering discounted telecommunications services under the universal service program must submit FCC Form 465, Description of Service Requested and Certification, to the Administrator. Rural health care providers must certify their eligibility to receive discounted telecommunications services. 47 CFR 54.615(c). The Administrator will then post a description of the services sought on a website for all potential competing service providers to see and respond to as if they were requests for proposals (RFPs). (No. of respondents: 1200; hours per response: 2.5 hours; total annual burden: 3000 hours). b. FCC Form 466, Funding Request and Certification: Rural health care providers that have ordered telecommunications under the universal service discount program must file FCC Form 466, Funding Request and Certification Form, with the Administrator. The data reported will be used to ensure that health care providers have selected the most cost-effective method of providing the requested services. 47 CFR 54.603(b)(4). (No. of respondents: 1350; hours per response: 2 hours; total annual burden: 2700 hours). c. FCC Form 466–A, Internet Toll Charge Discount Request: If a rural health care provider is only seeking support for toll charges to access the Internet, it must submit FCC Form 466–A. (No. of respondents: 5; hours per response: 1 hours; total annual burden: 5 hours). d. FCC Form 467, Connection Certification. Rural health care providers participating in the universal service support mechanism must submit FCC Form 467 to inform the Administrator that they have begun to receive, or have stopped receiving, the telecommunications services for which universal service support has been allocated. The data reported will be used to ensure that universal service support is distributed to telecommunications carriers serving eligible health care providers pursuant to 47 CFR 54.611. (No. of respondents: 1350; hours per response: 1.5 hours; total annual burden: 2025 hours). e. FCC Form 468, Telecommunications Carrier Form: Rural health care providers ordering telecommunications services under the universal service support mechanism must submit FCC Form 468, Telecommunications Carrier Form, to the Administrator. The data reported will be used to ensure that the telecommunications carrier receives the appropriate amount of credit for providing telecommunications services to eligible health care providers. 47 CFR 54.605–611. (No. of respondents: 1350; hours per response: 1.5 hours; total annual burden: 2025 hours). Copies of the forms and instructions may be obtained from the administrator by calling 1–800–229–5476. Copies of the forms and instructions may also be downloaded from the Administrator's Web page (*www.rl.universalservice.org*). Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0787.

Expiration Date: 09/30/2004.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance.

Form No.: FCC Form 478.

Respondents: Business or other for-profit; Individuals or household; State, local or tribal government.

Estimated Annual Burden: 28,414 respondents; 4.7 hours per response (avg.); 135,126 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Semi-annually; Third Party Disclosure; Recordkeeping.

Description: Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telecommunications exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' The section further provides that any telecommunications carrier that violates such verification procedures and that collects charges for telephone exchange service or telephone toll service from a subscriber, shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after such violation. In the Second Report and Order and Further Notice of Proposed Rulemaking (section 258 Order) issued in CC Docket No. 94–129, the Commission adopted rules to implement section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act). The goal of section 258 is to eliminate the practice of ''slamming,'' which is the unauthorized change of a subscriber's preferred carrier. In the section 258 Order, the Commission adopted various rules addressing verification of preferred carrier changes and preferred carrier freezes. The Commission also adopted liability rules designed to take the profit out of slamming. In the First Order on Reconsideration (Order), released May 3, 2000, the Commission amended certain of its liability rules by requiring slamming disputes between consumers and carriers to be brought before appropriate state commissions, or this Commission in cases where the state has not opted to administer our rules, rather than to authorized carriers. The Order also modified the liability rules that apply when a consumer has paid charges to a slamming carrier. The Order set forth certain notification requirements to facilitate carriers' compliance with the liability rules. The Commission issued a Third Report and Order and Second Order on Reconsideration in CC Docket No. 94–129, released August 15, 2000 and an Order released February 22, 2001. The modifications and additions adopted these Orders will improve the carrier change process for consumers and carriers, while making it more difficult for unscrupulous carriers to perpetrate slams. Following is a synopsis of the requirements approved by OMB. See above-mentioned Orders and 47 CFR parts 1 and 64 for complete details. a. Section 64.1110, State Notification of Election to Administer FCC Rules. Pursuant to section 64.1110(a), state notification of an intention to administer the Federal Communication Commission's unauthorized carrier change rules and remedies shall be filed with the Commission Secretary in CC Docket No. 94–129 with a copy of such notification provided to the Consumer Information Bureau Chief. Such notification shall contain, at a minimum, information on where consumers should file complaints, the type of documentation, if any, that must accompany a complaint, and the procedures the state will use to adjudicate complaints. Pursuant to section 64.1110(b), state notification of an intention to discontinue administering the Federal Communication Commission's unauthorized carrier change rules and remedies shall be filed with the Commission Secretary in CC Docket No. 94–129 with a copy of such amended notification provided to the Consumer Information Bureau Chief. Such discontinuance shall become effective 60 days after the Commission's receipt of the state's letter. (No. of respondents: 51; hours per response: 2 hours; total annual burden: 102 hours). b. Section 64.1120, Verification of Orders for Telecommunications Carriers. A carrier must retain verification records for two years after their creation. Pursuant to section 64.1120 no telecommunications carrier shall submit a preferred carrier charge order unless and until the order has first been confirmed. Telecommunications carriers may obtain the subscriber's written authorization as required by section 64.1130 or an electronic authorization, or an oral authorization through a qualified independent third party. (Number of respondents: 1772; hours per response: 2 hours; total annual burden: 3544 hours). c. Section 64.1130, Letter of Agency Form and Content. Pursuant to section 64.1130, a telecommunications carrier may use a written or electronically signed letter of agency to obtain authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform to this section is invalid for purposes of this part. The letter of agency shall be a separate document (or easily separable document) or located on a separate screen or Web page containing only the authorizing language described in 64.1130(e) having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone lines requesting the preferred carrier change. The letter of agency shall not be combined on the same document, screen, or Web page with inducements of any kind. The letter of agency must contain language that confirms that the subscriber may consult with the carrier as to whether a fee will apply to the change in the subscriber's preferred carrier. A letter of agency submitted with an electronically signed authorization must include the consumer disclosures required by section 101(c) of Electronic Signatures in Global and National Commerce Act. A carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. (No. of respondents: 1800; hours per response: 3 hours; total annual burden: 5500 hours). d. Section 64.1140, Carrier Liability for Slamming. Pursuant to section 64.1140(a), any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170 of part 64. Pursuant to section 64.1140(b), any subscriber whose selection of telecommunications service provider is changed without authorization or verification in accordance with the procedures set for 47 CFR 64.1140 will be liable for charges. (No. of respondents: 1910; hours per response: 2 hours; total annual burden: 3820 hours). e. Section 64.1150, Procedures For Resolution of Unauthorized Changes in Preferred Carrier—Pursuant to section 64.1150(a), executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers. Pursuant to section 64.1150(b), any carrier,

executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer Information Bureau, for resolution of the complaint. Pursuant to section 64.1150(c), upon receipt of an unauthorized carrier change complaint, the relevant governmental agency will notify the allegedly unauthorized carrier of the complaint and order that the carrier removes all unpaid charges from the subscriber's bill pending a determination of whether an unauthorized change, as defined by § 64.1100(e), has occurred, if it has not already done so. Pursuant to section 64.1150(d), not more than 30 days after notification of the complaint, or such lesser time as is required by the state commission if a matter is brought before a state commission, the alleged unauthorized carrier shall provide to the relevant government agency a copy of any valid proof of verification of the carrier change. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation. Pursuant to section 64.1150(e), the Federal Communications Commission will not adjudicate a complaint filed pursuant to § 1.719 or §§ 1.720–736, involving an alleged unauthorized change, as defined by § 64.1100(e) of this part, while a complaint based on the same set of facts is pending with a state commission. (No. of respondents: 1960; hours per response: 5 hours; total annual hours: 9800 hours). f. Section 64.1160, Absolution Procedures Where the Subscriber Has Not Paid—Pursuant to section 64.1160(a), this section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred. Pursuant to section 64.1160(b), an allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by § 64.1100(e) of this part, from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred. Pursuant to section 64.1160(c), an allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by § 64.1100(e) of this part, occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: (1) The complaining subscriber must file a complaint with a state commission that has opted to administer the FCC's rules, pursuant to § 64.1110 of this part, or the FCC within 30 days of either (i) the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section or (ii) the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and (2) a failure to file such a complaint within this 30-day time period will result in the charges removed being reinstated on the subscriber's bill and, consequently, the complaining subscribers will only be entitled to remedies for the alleged unauthorized change other than those provided for in § 64.1140(b)(1) of this part. No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph. Pursuant to section 64.1160(d), if the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred, an order shall be issued providing that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges. Pursuant to section 64.1160(e), if the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier. Pursuant to section 64.1160(f), if the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in § 64.1160 of this part shall apply to those payments. Pursuant to section 64.1160(g), if the relevant governmental agency determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred. (No. of respondents: 1960; hours per response: 8 hours; total annual burden: 15,680). g. Section 64.1170, Reimbursement Procedures Where the Subscriber Has Paid. Pursuant to section 64.1170(a), the procedures set forth in section 64.1170 shall apply only after a subscriber has determined that an unauthorized change, as defined by section 64.1100(e) of our rules, has occurred and the subscriber has paid charges to an allegedly unauthorized carrier. Pursuant to section 64.1170(b), if the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred, it shall issue an order directing the unauthorized carrier to forward to the authorized carrier the following, in addition to any appropriate state remedies, an amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and copies of any telephone bills issued from the unauthorized carrier to the subscriber. Pursuant to section 64.1170(c), within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to the relevant governmental agency that it has given a refund or credit to the subscriber. Pursuant to section 64.1170(d), if an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses. Pursuant to section 64.1170(e), if the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving an order as described in paragraph (b) of this section, inform the subscriber and the relevant governmental agency that issued the order if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the

subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier. Pursuant to section 64.1170(f), where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber. (No. of respondents: 1960; hours per response: 7 hours; total annual burden: 13,720 hours). h. Section 64.1180, Reporting Requirement. Pursuant to section 64.1180, each provider of telephone exchange and/or telephone toll service shall submit to the Commission FCC Form 478, Slamming Complaint Reporting Form, via e-mail (slamming *478@fcc.gov*), U.S. Mail, or facsimile a slamming complaint report form identifying the number of slamming complaints received during the reporting period and other information as specified in 64.1180(b). Reporting shall commence August 15, 2001. Carriers are required to complete and file a copy of the FCC Form 478. Copies of the form may be downloaded from the Commission's forms Web page (*www.fcc.gov/formpage.html*). Carriers are encouraged to maintain all records regarding slamming complaints for at least 24 months from the date on which they receive written, electronic, or oral contact by a consumer alleging that an unauthorized change in his/her preferred carrier was made by the carrier or by another carrier. (No. of respondents: 1850; hours per response: 7 hours per submission; 14 hours; total annual burden: 25,900 hours). i. Section 64.1190, Preferred Carrier Freezes. Section 64.1190 requires that all local exchange carriers that impose preferred carrier freezes on their subscribers' accounts must verify such freezes, as well as accept subscriber requests to lift such freezes in writing or by three-way calls. (No. of respondents: 1800; hours per response: 2 hours; total annual burden: 3600 hours). j. Section 1.719, Informal Complaints Filed Pursuant to section 258—section 1.719 applies to complaints alleging that a carrier has violated section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, by making an unauthorized change of a subscriber's preferred carrier, as defined by § 64.1100(e). Pursuant to section 1.719(b), the complaint shall be in writing, and should contain: (1) The complainant's name, address, telephone number and e-mail address (if the complainant has one); (2) the name of both the allegedly unauthorized carrier, as defined by § 64.1100(d), and authorized carrier, as defined by § 64.1100(c); (3) a complete statement of the facts (including any documentation) tending to show that such carrier engaged in an unauthorized change of the subscriber's preferred carrier; (4) a statement of whether the complainant has paid any disputed charges to the allegedly unauthorized carrier; and (5) the specific relief sought. If the complainant is unsatisfied with the resolution of a complaint under this section, the complainant may file a formal complaint with the Commission in the form specified in § 1.721 of this part. (No. of respondents: 13,200; hours per response: 4 hours; total annual burden: 52,800 hours). k. Voluntary Reporting Requirement. States that choose to administer the Commission's slamming rules must regularly file information with the Commission that details slamming activity in their regions. Such filings should identify the number of slamming complaints handled, including data on the number of valid complaints per carrier; the identity of top slamming carriers; slamming trends; and other relevant information. See paragraph 34 of the Order. (Number of respondents: 51; hours per response: 10 hours; total annual burden: 510 hours). The information from these collections will be used to implement section 258 of the Act. The information will strengthen the ability of our rules to deter slamming, while addressing concerns raised with respect to our previous administrative procedures. The information will also enable us to give victims of slamming adequate redress and ensure that carriers that slam do not profit from their fraud. The information will help to protect consumers from carriers who may attempt to take advantage of consumer confusion over different types of telecommunications services. The information gathered in response to the reporting requirement will enable the Commission to identify, as soon as possible, the carriers that repeatedly initiate unauthorized changes. Obligation to respond: Mandatory.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–24861 Filed 10–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2505]

Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding

September 27, 2001.

Petition for Reconsideration and Clarification has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC, or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by October 19, 2001. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147).

Magalie Roman Salas,

Secretary.

[FR Doc. 01–24860 Filed 10–3–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

CANCELLATIONS OF PREVIOUSLY ANNOUNCED MEETINGS:

Tuesday, October 2, 2001 at 10 a.m., meeting closed to the public.

Thursday, October 4, 2001 at 10 a.m., meeting open to the public.

DATE & TIME: *Wednesday, October 10, 2001 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: *Thursday, October 11, 2001 at 10 a.m.*

PLACE: 999 E. Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2001–14: Los Angeles County Democratic Central Committee by counsel, Laurence S. Zakson.

Revised draft Advisory Opinion 2001–12: (Tentative) Democratic Party of Wisconsin by Linda Honold, Chairperson.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–24993 Filed 10–2–01; 11:10 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Merrill M. Wesemann, Franklin, Indiana; to acquire additional voting shares of First Community Bancshares, Inc., Bargersville, Indiana, and thereby indirectly acquire additional voting shares of First Community Bank & Trust, Bargersville, Indiana.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Boyd Clark Bass, Bellevue, Colorado; Louise Loraine Bass, Albuquerque, New Mexico; and Carlton Clark Bass, McAlester, Oklahoma, as Co-Trustees of the Bass Family Trust; to acquire voting shares of First of McAlester Corporation, McAlester, Oklahoma, and thereby indirectly acquire voting shares of First National Bank and Trust Company, McAlester, Oklahoma.

Board of Governors of the Federal Reserve System, September 28, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–24797 Filed 10–3–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire 100 percent of the voting shares of Signal Financial Corporation, Mendota Heights, Minnesota, and thereby indirectly acquire Signal Bank National Association, Eagan, Minnesota, and Signal Bank South National Association, Red Wing, Minnesota.

2. Herky Hawk Financial Corp., Monticello, Iowa; to acquire 100 percent of the voting shares of Casey State Bank, Casey, Illinois.

3. Herky Hawk Financial Corp., Monticello, Iowa; to acquire 100 percent of the voting shares of New Vienna Savings Bank, New Vienna, Iowa.

4. Herky Hawk Financial Corp., Monticello, Iowa; to merge with Biggsville Financial Corporation, Biggsville, Illinois, and thereby indirectly acquire First State Bank of Biggsville, Biggsville, Illinois.

Board of Governors of the Federal Reserve System, September 28, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–24796 Filed 10–3–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 25, 2001. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E of the Martin Building (Terrace level). The meeting will begin at 8:45 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities to implement various consumer financial services, fair lending, and community investment

laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Electronic Delivery of Disclosures -Discussion of the Board's interim rules ensuring effective delivery of disclosures required under certain consumer financial services laws, when these disclosures are provided electronically.

Truth in Lending Act -Discussion of credit card rules to identify areas for possible regulatory revisions under Regulation Z which implements the Truth in Lending Act. Discussion of mortgage reform alternatives.

Community Reinvestment Act - Discussion of topics to be included in the 2002 review of Regulation BB which implements the Community Reinvestment Act.

Committee Reports - Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council regarding any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202-452-6470.

Board of Governors of the Federal Reserve System, September 28, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–24795 Filed 10–3–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Tuesday, October 9, 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: Michelle A. Smith, 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: October 2, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–25015 Filed 10–2–01; 12:25 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–64]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Cycle 6 of the National Survey of Family Growth (NSFG–6) (OMB No. 0920–0314)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The National Survey of Family Growth has been conducted periodically since 1973 by the National Center for Health Statistics, CDC. The first five cycles of the NSFG were based on interviews with women 15–44 years of age, to measure factors related to birth and pregnancy rates and maternal and infant health. In Cycle 6, both women and men will be interviewed. The interviews with males 15–44 will address (1) factors that affect entry into marriage, cohabitation, and fatherhood; (2) factors that affect the spread of Sexually Transmitted Diseases (STDs) and HIV (Human Immunodeficiency Virus, the virus that causes AIDS); and (3) factors that affect men's ability and willingness to carry out their fatherhood roles, including child support.

In 2002, the NSFG will interview a nationally representative sample of 11,500 women and 7,500 men 15–44 years of age. Black, Hispanic, and 15–24 year old men and women will be sampled at a higher rate than others. A pretest has been conducted. All participation is completely voluntary and confidential.

NSFG data help measure the demographics, health status, and behavior of the population of reproductive age (as well as those responsible for most STDs). The NSFG data from the 1995 survey have already been published in more than 60 published NCHS reports and articles in scientific journals. Besides NCHS, users of NSFG data include the Department of Health and Human Services (HHS) Office of Population Affairs, the National Institute for Child Health and Human Development, the CDC HIV/AIDS Prevention program, the CDC's Division of Reproductive Health, the Office of the Assistant Secretary for Planning and Evaluation (OASPE), and the Children's Bureau. Other users include Congress (for Section 905 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, among others); the Healthy People 2000 and 2010 initiatives; private researchers in demography, public health, maternal and child health, and state governments. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Survey: screener	55000	1	5/60	4,583
Survey: males	7500	1	1	7,500
Survey: females	11500	1	80/60	15,333
Verification	5500	1	5/60	458
Total				27,874

Dated: September 27, 2001.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–24876 Filed 10–3–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4028–N]

Medicare Program: Meeting of the Advisory Panel on Medicare Education—Thursday, October 25, 2001

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on Thursday, October 25, 2001. This Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS), on opportunities for CMS to optimize the effectiveness of the National Medicare Education Program and other CMS programs that help Medicare beneficiaries understand Medicare and the range of Medicare options available with the passage of the Medicare+Choice Program. The Panel meeting is open to the public.

DATE: The meeting is scheduled for Thursday, October 25, 2001, from 9:00 am. to 5:00 pm.

ADDRESS: The meeting will be held at the Capitol Hill Club, 300 First Street, SE., Washington, DC 20003, (202) 484–4590.

FOR FURTHER INFORMATION CONTACT: Nancy M. Caliman, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–5052. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (http://www.hcfa.gov/events/apme/homepage.htm) for additional information and updates on committee activities, or contact Ms. Caliman via E-mail at APME@cms.hhs.gov. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act, as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 and the charter renewing the Panel on January 18, 2001. The Advisory Panel on Medicare Education advises the Department of Health and Human Services and the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are to provide advice on the following:

- Developing and implementing a national Medicare education program that describes the options for selecting a health plan under Medicare.
- Enhancing the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- Assembling an information base of best practices for helping consumers evaluate health plan options and building a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Diane Archer, J.D., President, Medicare Rights Center; David Baldridge, Executive Director, National Indian Council on Aging; Bruce Bradley, M.B.A., Director, Managed Care Plans, General Motors Corporation; Carol Cronin, Chairperson, Advisory Panel on Medicare Education; Joyce Dubow, M.U.P., Senior Policy Advisor, Public Policy Institute, AARP; Jennie Chin Hansen, Executive Director, On Lok Senior Health Services; Elmer Huerta, M.D., M.P.H., Director, Cancer Risk and Assessment Center, Washington Hospital Center; Bonita Kallestad, J.D., M.S., Mid Minnesota Legal Assistance; Steven Larsen, J.D., M.A., Maryland Insurance Commissioner, Maryland Insurance Administration; Brian Lindberg, M.M.H.S., Executive Director, Consumer Coalition for Quality Health Care; Heidi Margulis, B.A., Vice President, Government Affairs, Humana, Inc.; Patricia Neuman, Sc.D., Director, Medicare Policy Project, Henry J. Kaiser Family Foundation; Elena Rios, M.D., M.S.P.H., President, National Hispanic Medical Association; Samuel Simmons, B.A., President and CEO, The National Caucus and Center on Black Aged, Inc.; Nina Weinberg, M.A., President, National Health Council; and Edward Zesk, B.A., Executive Director, Aging 2000.

The agenda for the October 25, 2001 meeting will include the following:

- Recap of the previous meeting (July 12, 2001).
- CMS update/issues.
- Fall Medicare Ad Campaign.
- Update on Medicare Helpline and Medicare Personal Plan Finder (Web-based Decision Support Tool).
- APME Annual Report.
- Public comment.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should contact Ms. Caliman by 12 noon, Thursday, October 18, 2001. In conjunction, a written copy of the oral presentation should also be submitted to Ms. Caliman by 12 noon, Thursday, October 18, 2001. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Caliman by 12 noon, Thursday, October 18, 2001. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign

language interpretation for the hearing impaired or other special accommodations should contact Ms. Caliman at least 15 days before the meeting.

(Section 222 of the Public Health Service Act (42 U.S.C. 217(a)) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a) and 41 CFR 102–3)
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 28, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–24919 Filed 10–1–01; 3:09 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Graduate Student Training Programs Application

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Graduate Partnerships Program/OIR/OD, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Graduate Student Training Programs Application. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The information gathered in the Graduate Student Training Programs application will enable the identification and evaluation of graduate students interested in performing their dissertation research in the NIH Intramural Research Program laboratories (NIH IRP). Modeling university applications for admission into graduate programs, the Graduate Student Training Program application contains several sections that will aid the NIH admission committee's identification and evaluation of each graduate student. Specific areas required to evaluate a candidate include the following: Contact information, citizenship status, identification of programs to which the student wishes to apply, students' graduate university information and undergraduate university information, standardized examination scores, references and letters of recommendation, proposed NIH advisor information, University advisor information, research interests, career goals, and proposed research in NIH IRP. Ethnicity and gender are additional optional information used to evaluate the GPP recruiting abilities and compliance with federal regulation. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* Students pursuing an advanced degree, Ph.D., and would like to perform their dissertation research in the NIH Intramural Research Program laboratories.

The annual reporting burden is displayed in the following table:

ESTIMATES OF HOUR BURDEN

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Student Application to Current Graduate Student Program	250	1	0.50	125
Student Application to Future Graduate Student Programs	500	1	0.50	250
Recommendations (750×3)	2250	1	0.25	563
Totals	3000			938

Estimate of Capital Costs, Operating Costs, and/or Maintenance Costs are displayed in the following table:

Annualized capital, start-up cost	Amount	Operational/maintenance and purchase components	Amount
Information Collection	$0.00	Trouble-shooting and monitoring fees	#2000.00
Application Design, Development, Testing	12,000.00	Maintenance	1000.00
Total	$12,000.00	Total	$3,000.00

Estimate of Other Total Annual Cost Burden: $15,000.00.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Patty McCarthy, Program Coordinator, Graduate Partnerships Program,

National Institutes of Health, 10 Center Drive, Building 10/Room 1C129, Bethesda, Maryland 20892–1153, or call 301–594–9603 or e-mail your request, including your address to: *mccarthy@od.nih.gov*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: September 24, 2001.

Michael M. Gottesman,

Deputy Director of Intramural Research, National Institutes of Health.

[FR Doc. 01–24830 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: October 23, 2001.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: Among the topics proposed for discussion are: (1) The science underlying complementary and alternative medicine; (2) human research protections; (3) technology transfer activities at the NIH: current issues; and (4) staff reports on NIH stem cell research activity.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Jennifer E. Gorman, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448, *gormanj@od.nih.gov.*

Information is also available on the Institute's/Center's home page: www.nih.gov/about/publicliaison/index.html, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24837 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: October 2, 2001.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To discuss and make recommendations of the draft Human Research Protections Report and Executive Summary.

Place: Conference Call Toll Free Number: 877–901–9810, Passcode: 769101, you will hear music until the call is activated. (Telephone Conference Call).

Contact Person: Jennifer E. Gorman, NIH Public Liaison/Copr Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448, gormanj@od.nih.gov.

This notice is being published less than 15 days in advance of the meeting due to scheduling conflicts among the members. Information is also available on the Institute's/Center's home page: www.nih.gov/about/publicliaison/index.html, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93:22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93:232, Loan Repayment Program for Research Generally; 93:39, Academic Research Enhancement Award; 93:936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24838 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prognosis & Prediction: Phase Application Awards and SBIR/STTR Initiative.

Date: October 29, 2001.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalog of Federal Domestic Assistance Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24841 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: October 15–17, 2001.

Time: 8:00 a.m. to 4:30 p.m.

Agenda: To hold the Survivorship Forum, receive updates from the Working Groups and to discuss priorities for the DCLG.

Place: The DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Elaine Lee, Acting Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

This meeting is being published less than 15 days prior to meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/dclg/delg.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24848 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Shared Resources for Scientists not at NCI Funded Cancer Centers.

Date: November 13–14, 2001.

Time: 7 p.m. to 5 p.m.

Agenda: to review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, national institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24849 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer.

Date: November 14–16, 2001.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24850 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Behavioral Research in Cancer Control.

Date: November 5, 2001.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room G, 6130 Executive Plaza, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, PhD., Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399; Cancer Control, National Institutes of Health, HHS)

Dated: September 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24851 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Tissue and Biological Fluids Banks of HIV-Related Malignancies.

Date: October 19, 2001.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8043, Bethesda, MD 20892, (301) 496–7576.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24852 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL CANCER INSTITUTE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee B—Basic Sciences.

Date: November 1, 2001.

Time: 9 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, Building 31, C Wing, 6th Floor, Conference Rooms 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7027, Rockville, MD 20852, (301) 496–7628.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24854 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Health, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Mentored Patient-Oriented Research Career Development Award (PA–00–004).

Date: September 28, 2001.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, 6701 Rockledge Dr. Rm. 6168, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Diane M. Reid, MD, Review Branch, Room 7182, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0277.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Hearth and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institute of Health, HHS)

Dated: September 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24833 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Neurological Disorders and Stroke Council, September 13, 2001, 10:30 a.m. to September 14, 2001, 5 p.m., 1 Center Drive, Building 1, Wilson Hall, Bethesda, MD 20892 which was published in the **Federal Register** on August 27, 2001, 01–21527.

The meeting has been rescheduled for Oct. 8, 2001, 10:30 a.m., Natcher Bldg., Rm E1–E2. For further information regarding times and locations of Subcommittee meetings, please go to *www.ninds,nih.gov/about_ninds/advisory_council_info.htm.* The meeting is partially closed to the public.

Dated: September 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24832 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, October 1, 2001, 12:30 p.m. to October 1, 2001, 4:30 p.m., Holiday Inn, 8120 Wisconsin Avenue, Bethesda MD, 20814 which was published in the **Federal Register** on September 21, 2001, Volume 66 FR 48698.

The meeting has been changed to a teleconference meeting to be held at the Neuroscience Center, NIH, 6001 Executive Blvd., Rockville, MD 20852. The meeting will convene from 1:00 p.m. to 3:00 p.m. The date remains the same. The meeting is closed to the public.

Dated: September 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24834 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, October 14, 2001, 12:00 pm to October 14, 2001, 4:00 pm, NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709 which was published in the **Federal Register** on September 13, 2001, FR66:47680.

The date of this meeting has been changed to October 12, 2001. Meeting location and time remains the same. The meeting is closed to the public.

Dated: September 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24835 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of RFP NIH–ES–01–10—Studies to Evaluate the Health Effects of Chemicals in Developing Animals for the National Toxicology Program (NTP).

Date: October 22, 2001.

Time: 9:30 AM to 1:30 PM.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, 79 T W Alexander Dr., Bldg. 4401, Rm EC–122

Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Zoe E Huang, MD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institutes of Environmental Health Sciences, P.O. Box 12233, MD/EC–30, Research Triangle Park, NC 27709, 919/541–4964.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of RFP NIH–ES–01–15—Studies to Evaluate the Toxic & Carcinogenic Potential of San-Trimer.

Date: October 31, 2001.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K, Bass, PhD. Scientific Review Administrator, Scientific Review Branch Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: September 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24836 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: October 18–19, 2001.

Time: October 18, 2001, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: John E. Richters, PhD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, (HHS)

Dated: September 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24840 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Mental Retardation Research Subcommittee, Mental Retardation Research Subcommittee.

Date: October 25–26, 2001.

Time: 8 a.m. to 5p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Fairfax Hotel, 2100 Massachusetts Ave., NW., Washington, DC 20008.

Contact Person: Norman Change, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: September 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24842 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: October 24, 2001.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24843 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, October 10, 2001, 1:00 pm to October 10, 2001, 2:30 pm, 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 which was published in the **Federal Register** on August 30, 2001, 66 FR 45861.

The meeting will be held on 10/11/2001 at 1:00 p.m. The meeting is closed to the public.

Dated: September 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24844 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Medical Rehabilitation Research Subcommittee.

Date: October 15–16, 2001.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington, Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., RM. 5E03, Bethesda, MD 20892, 301–435–6908.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS).

Dated: September 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24845 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: October 25, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 25, 2001.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24855 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Cancellation of Meeting

Notice is hereby given of the cancellation of the Board of Scientific Counselors, National Library of Medicine, October 22, 2001, 7:00 p.m. to October 23, 2001, 2:00 p.m., National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894 which was published in the **Federal Register** on August 23, 2001, 66 FR 164.

The meeting is cancelled and will be postponed for a later date due to problems with airline flights and attendance.

Dated: September 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24846 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Cancellation of Meeting

Notice is hereby given of the cancellation of the PubMed Central National Advisory Committee, October 10, 2001, 8:30 a.m. to October 10, 2001, 4:00 p.m., National Library of Medicine, Board Room, Bldg. 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894 which was published in the **Federal Register** on August 23, 2001, 66 FR 44366.

The meeting is cancelled and will be postponed for a later date due to problems with airline flights and attendance.

Dated: September 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24847 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel SEP Training Grants.

Date: October 15–16, 2001.

Time: October 15, 2001, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott,, 5151 Pooks Hill Road,, Bethesda, MD 20814.

Time: October 16, 2001, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: Merlyn M. Rodrigues, MD, PhD., Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24853 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 10, 2001.

Time: 7 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: State Plaza, 2117 E Street, Washington, DC 20037.

Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 15–16, 2001.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 30814.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group. Chemical Pathology Study Section.

Date: October 15–17, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4120, MSC 7804 Bethesda, MD 20892, (301) 435–3504, *fungv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Group, Nursing Research Study Section.

Date: October 15–18, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Center, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.)

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Endocrinology Study Section.

Date: October 15–16, 2001.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave, Chevy chase, MD 20815.

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, General Medicine A Subcommittee 2.

Date: October 15–16, 2001.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 3.

Date: October 15–16, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Inverness Hotel and Golf Club, 200 Inverness Drive West, Englewood, CO 80112.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Alcohol and Toxicology Subcommittee 3.

Date: October 15–16, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Endocrinology Study Section.

Date: October 15–16, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Endocrinology Study Section.

Date: October 15–16, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Debora L. Hamernik, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 6152, MSC 7892, Bethesda, MD 20892, (301) 435–4511, *hamernid@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 2.

Date: October 15, 2001.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0492, *tathamt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 15, 2001.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 15, 2001.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 2175, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *greenwelp@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 15, 2001.

Time: 3 p.m. to 3:45 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 3176 MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 7.

Date: October 16–17, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 16–17, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW., Washington, DC 20037.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 4.

Date: October 16–17, 2001.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Dan Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5176 MSC 7844, Bethesda, MD 20892, (301) 435–1255.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Experimental Virology Study Section.

Date: October 16–17, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Montgomery Village Ave., Gaithersburg, MD 20879.

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4198, MSC 7808, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 1.

Date: October 16–17, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Gamil C Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Oral Biology and Medicine Subcommittee 1.

Date: October 16–17, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781. *th88q@nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group, Immunobiology Study Section.
Date: October 16–17, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 16, 2001.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174. *dhindsad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–BDCN–2 (01).
Date: October 17–18, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Michael A Oxman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4112, MSC 7848, Bethesda, MD 20892, (301) 435–3565, *oxmanm@mail.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.
Date: October 17–19, 2001.
Time: 6 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Churchill Hotel, 1914 Connecticut Avenue, N.W., Washington, DC 20009.
Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 18, 2001.
Time: 8 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

Name of Committee: Genetic Sciences Integrated Review Group Genetics Study Section.
Date: October 18–20, 2001.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *remondid@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.
Date: October 18–19, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 2.
Date: October 18–19, 2001.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Lawrence N. Yager, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive MSC 7808, room 4190, Bethesda, MD 20892, 301–435–0903, *yagerl@csr.nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group, Allergy and Immunology Study Section.
Date: October 18–19, 2001.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham City Center, 1143 New Hampshire Avenue NW., Washington, DC 20037.
Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemistry Sturdy Section.
Date: October 18–19, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Metallobiochemistry Study Section.
Date: October 18–19, 2001.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Phoenix Park Hotel, 520 N. Capital Street, NW., Washington, DC 2001.
Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1723, *nelsonj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 8.
Date: October 18–19, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Cell Development and Function Integrated Review Group, International and Cooperative Projects Study Section.
Date: October 18–19, 2001.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

Name of Committee: Biochemical Sciences Integrated Review Group Biochemistry Study Section.
Date: October 18–19, 2001.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *ganguly c@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Bacteriology and Mycology Subcommittee 1.
Date: October 18–19, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–4117.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 18–19, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *banner@drg.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 3.
Date: October 18–19, 2001.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Prevention and Health Behavior 1.
Date: October 18–19, 2001.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Washington, 15th St. & Pennsylvania Ave, NW., Washington, DC 20005.
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 18–19, 2001.
Time: 9 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 18, 2001.
Time: 4:30 p.m. to 5:15 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 19, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Club Quarters DC, 839 17th Street, NW., Washington, DC 20006.
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 19, 2001.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cscooperc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: September 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24831 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 10, 2001.
Time: 6:30 p.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 21–23, 2001.
Time: 7:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Hotel, 808 20th Street, South, Birmingham, AL 35206.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, General Medicine A Subcommittee 1.
Date: October 22–23, 2001.
Time: 8:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, davidsoh@csr.nih.gov.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Human Embryology and Development Subcommittee 1.
Date: October 22–23, 2001.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase MD 20815.
Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Bio-Organic and Natural Products Chemistry Study Section.
Date: October 22–23, 2001.
Time: 8:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave., Palladian West, Chevy Chase, MD 20815.
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, radtkem@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 22–23, 2001.
Time: 8:30 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1047, mccormm@csr.nih.gov.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.
Date: October 22–23, 2001.
Time: 8:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, rakhitg@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 22–23, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group, Nutrition Study Section.
Date: October 22–23, 2001.
Time: 8:30 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section.
Date: October 22–23, 2001.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Washington, 515 15th Street, N.W., Washington, DC 20004.
Contact Person: Dennis Leszcynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 22–23, 2001.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Island Avenue, NW., Washington, DC 20036.
Contact Person: Jeffrey W. Elias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 22, 2001.
Time: 11 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 22, 2001.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Syed Amir, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, amirs@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 22, 2001.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, riverse@csr.mih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 23–24, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gopal C. Sharma, DVM, PhD, MS, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, sharmag@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Integrative, Functional and Cognitive Neuroscience 5.
Date: October 23–24, 2001.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 23–24, 2001.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 23, 2001.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Elaine Sierra-Rivera, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, riverse@csr.nih.gov.

Name of Committee: Pathophysiological Sciences Integrated Review Group Lung Biology and Pathology Study Section.
Date: October 24–25, 2001.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.
Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, george_barnas@nih.gov.

Name of Committee: Pathophysiological Sciences Integrated Review Group Alcohol and Toxicology Subcommittee 1.
Date: October 24–25, 2001.

Time: 8:30 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.
Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, (301) 435–1169, greenwelp@csr.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Microbial Physiology and Genetics Subcommittee 1.
Date: October 24–25, 2001.
Time: 8:30 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, D.C. DC 20037.
Contact Person: Alicia J. Dombroski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149, dombrosa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 24, 2001.
Time: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.
Contact Person: Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–3562.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 24, 2001.
Time: 5:30 p.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: October 24, 2001.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878. 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–24839 Filed 10–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No.: TE–006328
Applicant: Brian Drake, Nuevo, California

The applicant requests a permit amendment to take (harass by survey) the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cantorum*) in conjunction with population monitoring throughout the species' range for the purpose of enhancing its survival.

Permit No.: TE–041668
Applicant: Cleveland National Forest, San Diego, Calfornia

The applicant requests a permit amendment to remove/reduce to possession *Allium munzii* (Munz's onion), *Astragalus brauntonii* (Braunton's milkvetch), *Berberis nevinii* (Nevin's barberry), Dodecahema leptoceras (slender-horned spineflower), and *Poa atropurpurea* (San Bernardino bluegrass) for voucher specimens on the Cleveland National Forest for the purpose of enhancing their survival. The applicant is currently authorized to take (capture) the arroyo southwestern toad (*Bufo microscaphus californicus*); take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*); and remove and reduce to possession the slender-horned spineflower (*Dodecahema leptoceras*) while conducting life history studies for the purpose of enhancing their survival under subpermit CLEVNF–4.

Permit No.: TE–047253
Applicant: Esther S. Rubin, Valley Center, California

The applicant requests a permit to take (harass) the Peninsular bighorn sheep (*Ovis canadensis*) in conjunction with ecological research at Anza Borrego State Park, California for the purpose of enhancing its survival.

Permit No.: TE–796835
Applicant: Thomas Kucera, San Rafael, California

The applicant requests a permit amendment to take (capture and mark) the Fresno kangaroo rat (*Dipodomys nitratoides exilis*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) in conjunction with surveys throughout each species' range in California for the purpose of enhancing their survival.

Permit No.: TE–025732
Applicant: Samuel S. Sweet, Santa Barbara, California

The applicant requests a permit amendment to take (radio-track, harass by use of a thread-trailing device and use of television camera's in burrows) the California tiger salamander (*Ambystoma californiense*) in conjunction with ecological research in Santa Barbara County, California for the purpose of enhancing its survival.

Permit No.: TE–047805
Applicant: National Audubon Society, Honolulu, Hawaii

The applicant requests a permit to take (capture) short-tailed albatross (*Phoebastria nigripes*) in conjunction with research on an underwater setting chute on a Hawaii tuna longline vessel in Federal waters off the State of Hawaii for the purpose of enhancing its survival.

Permit No.: TE–047998
Applicant: Jeffrey S. Crain, Garden Grove, California

The applicant requests a permit to take (harass by survey, collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) throughout each species' range in California and Oregon conjunction with surveys for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before November 5, 2001.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit

number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 01–24875 Filed 10–3–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service Implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that a Letter of Authorization to take polar bears incidental to oil and gas industry exploration activities in the Beaufort Sea and adjacent northern coast of Alaska has been issued to the following company:

Company	Activity	Location	Date Issued
Anadarko Petroleum Co	Exploration	Altamura Prospect	September 14, 2001.

CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: The Letter of Authorization is issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000).''

Dated: September 18, 2001.

Gary Edwards,

Deputy Regional Director.

[FR Doc. 01–24859 Filed 10–3–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

CORRECTION—Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI.

This notice corrects and supercedes the Notice of Inventory Completion published May 3, 2001, by substituting ''Wampanoag Tribe of Gay Head (Aquinnah)'' for ''Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group)'' in each reference to groups that were consulted, groups that were affiliated with human remains and associated funerary objects listed in the notice, groups to which copies of this notice had been sent, and groups participating in the repatriation of these human remains and associated funerary objects. Paragraphs 3, 5, 7, 9, 11, 13, 15, 17, and 18 of the May 3, 2001, notice are corrected by this substitution. The full corrected text of the notice follows.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Museum of Natural History and Planetarium professional staff in consultation with representatives of the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

In 1899, human remains representing one individual were recovered from Jamestown, RI, by James H. Clarke and donated to the Museum of Natural History and Planetarium. No known individual was identified. The two associated funerary objects are an iron axe fragment and an animal bone fragment.

Based on red ochre and copper staining on the human remains, this individual has been determined to be Native American from the contact period. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

Before May 1939, human remains representing two individuals were recovered from Old Warwick, near Wharf Road, East Greenwich, RI, by Lincoln C. Bateson, who donated these human remains to the Museum of Natural History and Planetarium in May 1939. No known individuals were identified. No associated funerary objects are present.

Based on museum documentation and physical evidence, these individuals have been identified as Native American. Based on physical evidence and geographic/provenience information, these individuals have been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

In 1854, human remains representing one individual were recovered from the Stone Bridge Inn site (RI 1947), Tiverton, RI, by person(s) unknown, and donated to the Museum of Natural History and Planetarium in 1903. No

known individual was identified. No associated funerary objects are present.

Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

In 1927, human remains representing one individual were recovered from London Street, East Greenwich, RI, and donated to the Museum of Natural History and Planetarium by W.E. Crease. No known individual was identified. No associated funerary objects are present. Accession information states these human remains were ''dug up on London Street, 10 feet deep.'' Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

In 1936, human remains representing one individual were recovered from Melrose Street, West Ferry site, Jamestown, RI, by Roy Johnson, Louis Watson, and others. In 1937, these human remains were donated to the Museum of Natural History and Planetarium by Mr. Johnson. No known individual was identified. The one associated funerary object is a blanket fragment.

Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

In 1894, human remains representing three individuals were recovered from the Burr's Hill Burial Ground, Warren, RI, by A.T. Vaughn, who donated these remains to the Museum of Natural History and Planetarium in 1900. No known individuals were identified. Museum documentation indicates that ''curios'' were found with these human remains, and were transferred in 1913 to the Heye Foundation (now the National Museum of the American Indian) as part of an exchange. No associated funerary objects are now present in the collections of the Museum of Natural History and Planetarium.

Based on skeletal morphology and extensive copper staining, these individuals have been identified as Native American from the 17th century. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, these individuals have been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

In 1894, human remains representing one individual were recovered from Jamestown, RI, by A.T. Vaughn of the Antiquarian Society of Warren, RI. In 1900, these human remains were donated by Mr. Vaughn to the Museum of Natural History and Planetarium. No known individual was identified. The four associated funerary objects are fragments of bark, hair, iron, and cloth that are adhered to the human remains.

Based on skeletal morphology and extensive copper staining, this individual has been identified as Native American from the contact or proto-historic period. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

Based on the above-mentioned information, officials of the Museum of Natural History and Planetarium have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 10 individuals of Native American ancestry. Officials of the Museum of Natural History and Planetarium also have determined that, pursuant to 43 CFR 10.2 (d)(2), the seven objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Natural History and Planetarium have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah).

This notice has been sent to officials of the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Marilyn Massaro, Curator of Collections, Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI 02905, telephone (401) 785–9457, before November 5, 2001. Repatriation of the human remains and associated funerary objects to the Narragansett Indian Tribe of Rhode Island and Wampanoag Tribe of Gay Head (Aquinnah) may begin after that date if no additional claimants come forward.

Dated: June 25, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–24936 Filed 10–3–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Nevada State Museum, Carson City, NV, and in the Control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from the vicinity of Pyramid Lake, Washoe County, NV, in the possession of the Nevada State Museum, Carson City, NV, and in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Nevada State Museum and Bureau of Indian Affairs professional staff in consultation with representatives of the Pyramid Lake

Paiute Tribe of the Pyramid Lake Reservation, Nevada.

During the 1960s, human remains representing a minimum of one individual were removed from a site east of the Needles at the north end of Pyramid Lake, Washoe County, NV, by Peter Ting, Sr. In 1981, Mr. Ting donated these human remains to the Nevada State Museum. No known individual was identified. The three associated funerary objects are a rusty revolver, a bag of sand, and a bag of small mammal bones.

Based on the age, physical characteristics, and location of burial, this individual has been determined to be Native American. The revolver dates these human remains to the 1840s. The location of the burial is within the boundaries of the Pyramid Lake Reservation. Historic documents and consultation evidence, including tribal oral history, indicate that this area has been occupied by the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada since precontact times.

In 1964, human remains representing a minimum of one individual were removed from an unknown location between the Wadsworth and Derby Dams on the Truckee River, Washoe County, NV, by Martin H. Mann. Also in 1964, Mr. Mann donated these human remains to the Nevada State Museum. No known individual was identified. The one associated funerary object is a blue glass trade bead.

Based on cranial morphology and the associated funerary object, this individual has been determined to be Native American. The trade bead dates these human remains to the 19th century, circa 1840–1900. Historic documents and consultation evidence, including tribal oral history, indicate that this area has been occupied by the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada since pre-contact times.

In 1965, human remains representing a minimum of one individual were removed from an area known as ''Paul Bunyan's Corral'' near Pyramid Lake, Washoe County, NV, by P. Wheat, Fred Keiper, and G. Grosscup. Also in 1965, Messrs. Wheat, Keiper, and Grosscup donated these remains to the Nevada State Museum. No known individual was identified. The one associated funerary object is an arrow shaft with an attached Desert Side-Notched point.

On the basis of a radiocarbon date of A.D. 1710 obtained from the arrow shaft, these human remains have been determined to be Native American. Archeological evidence, based on the continuity of basketry types found in the area, indicates that the Northern Paiute presence in the Paul Bunyan Corral area of Pyramid Lake, NV, extends back at least 600 years. Based on the recent radiocarbon date, continuity of occupation, and tribal history of major occupations in the Paul Bunyan Corral area, these human remains have been determined to be affiliated with the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

In 1974, human remains representing a minimum of one individual were removed by Donald R. Tuohy and David Clark during construction of the Marble Bluff Dam and fishway near the Truckee River delta, Washoe County, NV, on the Pyramid Lake Indian Reservation. Messrs. Tuohy and Clark donated these human remains to the Nevada State Museum in the same year. No known individual was identified. No associated funerary objects are present.

Based on a radiocarbon date of A.D. 1660 obtained from the house floor feature associated with these human remains, this individual has been determined to be Native American. Archeological evidence, based on the continuity of basketry types found in the area, indicates that the Northern Paiute presence in the Truckee River delta area extends back at least 600 years. Based on the recent radiocarbon date, continuity of occupation, and tribal history of major occupations in the Truckee River delta area, these human remains have been determined to be affiliated with the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

At an unknown date, human remains representing a minimum of one individual were removed from an area on the northeastern shore of Pyramid Lake, Washoe County, NV, known as ''Hell's Kitchen,'' by unknown persons and donated to the Nevada State Museum. No known individual was identified. The 34 associated funerary objects include ceramic fragments, modified wood fragments, twisted willow fragments, stone flakes, a fish head, animal bones, and a piece of historic fabric.

Based on the known context and associated funerary objects, this individual has been determined to be Native American. Based on the presence of historic fabric, this burial is estimated to date to the 19th century, circa 1840–1900. The location from which these human remains were recovered is a known traditional burial area of the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada, and is within the exterior boundaries of the present day Pyramid Lake Reservation.

Based on the above-mentioned information, officials of the Nevada State Museum and the Bureau of Indian Affairs have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the Nevada State Museum and the Bureau of Indian Affairs also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 39 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Nevada State Museum and the Bureau of Indian Affairs have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

This notice has been sent to officials of the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Alanah Woody, Nevada Division of Museums and History NAGPRA Coordinator, 600 North Carson Street, Carson City, NV 89701, telephone (775) 687–4810, extension 229, before November 5, 2001. Repatriation of the human remains and associated funerary objects to the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada may begin after that date if no additional claimants come forward.

Dated: May 18, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–24937 Filed 10–3–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act

(NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the New York State Museum, Albany, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by New York State Museum professional staff in consultation with representatives of the Stockbridge Munsee Band of Mohican Indians.

In 1969, human remains representing a minimum of one individual were removed from the Coffin site (NYSM Site Number 1304), Easton Township, Washington County, NY, located on the eastern floodplain of the Hudson River. Excavations were conducted by New York State Museum staff. Although the site was a habitation site, a single burial was encountered in a storage pit. No known individual was identified. No associated funerary objects are present.

Field records and descriptions of the site indicate that all excavated features originated in the Oak Hill Phase Late Woodland occupation of the site, dated to circa A.D. 1300–1400. The Oak Hill phase is part of a developmental continuum attributed to Algonkian speakers. The site is within the historically-known aboriginal homeland of the Mohicans.

Between 1954 and 1974, human remains representing a minimum of 39 individuals were recovered from the Menands Bridge site (NYSM Site Number 1361), located on the alluvial flats west of the Hudson River, Menands, Colonie Township, Albany County, NY. Salvage excavations were conducted by New York State Museum staff and local avocational archaeologists R. Arthur Johnson and C. S. Sundler. No known individuals were identified. The three associated funerary objects are two rounded pebbles and a soil sample from one burial.

Field records, diagnostic artifacts, a radiocarbon date, and descriptions of the site indicate that most of the burials were interred during the Late Woodland period, circa A.D. 1275–1400. Based on the archaeological evidence and the geographic location of the Menands Bridge site within the historically known aboriginal homeland of the Mohican, human remains and associated funerary objects from the Menands Bridge site are most likely to be culturally affiliated with the Stockbridge Munsee Band of Mohican Indians.

Based on the above-mentioned information, officials of the New York State Museum have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 40 individuals of Native American ancestry. Officials of the New York State Museum have also determined that, pursuant to 43 CFR 10.2(d)(2), the three objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the New York State Museum have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Stockbridge Munsee Band of Mohican Indians.

This notice has been sent to officials of the Stockbridge Munsee Band of Mohican Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Lisa M. Anderson, NAGPRA Coordinator, New York State Museum, 3122 CEC, Albany, NY 12230, telephone (518) 474–5813, before November 5, 2001. Repatriation of the human remains and associated funerary objects to the Stockbridge Munsee Band of Mohican Indians may begin after that date if no additional claimants come forward.

Dated: June 14, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–24932 Filed 10–3–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9 of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

In 1875, human remains representing 110 individuals were donated to the Peabody Museum of Archaeology and Ethnology by the Smithsonian Institution. The human remains were accessioned into the Peabody Museum of Archaeology and Ethnology the same year. No known individuals were identified. No associated funerary objects are present.

Museum records indicate that these remains were collected by Paul Schumacher in 1875 as part of a joint expedition of the Peabody Museum of Archaeology and Ethnology and the Smithsonian Institution. The remains were collected from unknown sites on San Miguel Island and Santa Cruz Island, CA.

Archeological investigations have identified a cultural continuity for the Chumash Indians that traces their presence on the northern Channel Islands back 7,000 to 9,000 years. Geographical, archeological, and oral history evidence indicate a shared group identity between these human remains from San Miguel Island and Santa Cruz Island, CA, and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, the present-day tribe most closely associated with the prehistoric and historic Chumash Indians.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above are reasonably believed to be the physical remains of 110 individuals of Native American ancestry. Officials of the Peabody

Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these human remains and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

This notice has been sent to officials of the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495–2254, before November 5, 2001. Repatriation of the human remains to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may begin after that date if no additional claimants come forward.

Dated: June 14, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–24933 Filed 10–3–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10(a)(3), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 32 cultural items are 11 quartz fragments, 19 strands of glass and shell beads, and 2 shell ornaments.

In 1877, Peabody Museum of Archaeology and Ethnology acquired 30 cultural items that had been collected during a joint expedition of the Peabody Museum of Archaeology and Ethnology and the Smithsonian Institution to the Channel Islands, CA. Museum records indicate that these cultural items were collected by Steven Bowers from graves at unknown sites on San Miguel Island, CA. The Peabody Museum of Archaeology and Ethnology is not in possession of the human remains from these burials.

In 1877, Peabody Museum of Archaeology and Ethnology acquired two cultural items that had been collected during a joint expedition of the Peabody Museum of Archaeology and Ethnology and the Smithsonian Institution to the Channel Islands, CA. Museum records indicate that these cultural items were collected by Steven Bowers from graves at unknown sites on Santa Rosa Island, CA. The Peabody Museum of Archaeology and Ethnology is not in possession of the human remains from these burials.

Archeological investigations have identified a cultural continuity for the Chumash Indians that traces their presence on the northern Channel Islands back 7,000 to 9,000 years. Geographical, archeological, and oral history evidence indicate a shared group identity between the cultural items from San Miguel Island and Santa Cruz Island, CA, and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, the present-day tribe most closely associated with the prehistoric and historic Chumash Indians.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these 32 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony, and are believed, by a preponderance of evidence, to have been removed from specific burial sites of Native American individuals. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

This notice has been sent to officials of the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495–2254, before November 5, 2001. Repatriation of these unassociated funerary objects to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may begin after that date if no additional claimants come forward.

Dated: June 14, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–24934 Filed 10–3–01 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico;

Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Between the 1920s and the 1950s, human remains representing six individuals (catalog numbers DU6061, DU6068, DU6069, DU6070, and DU6181) were collected by Dr. E.B. Renaud, founder of the University of Denver Department of Anthropology. The remains were collected from unknown locations in the Southwestern United States. No known individuals were identified. No associated funerary objects are present.

Dr. Renaud identified these individuals as ''Pueblo'' due to cranial reshaping that was due to ''cradleboarding.'' Evidence presented in consultations confirmed that these individuals were the ancestors of modern Pueblo peoples. The geographic evidence supports this cultural affiliation. Representatives from the Hopi Tribe, Pueblo of Acoma, Pueblo of Isleta, Pueblo of Jemez, and Zuni Tribe provided written and oral testimony confirming a link between the Puebloan peoples and pre-European contact cultures in the Southwest.

In 1939, human remains representing one individual (catalog number 1995.1.1) were recovered from Mesa Portales, Sandoval County, NM, by Theodore Sowers. Mr. Sowers was a graduate of the University of Denver, and, in 1995, his daughters donated the remains to the University of Denver so that they could be repatriated. No known individual was identified. The 24 associated funerary objects are 1 stone pipe, 1 bone tool, 1 sinker, 3 drills, 2 bone awls, 5 projectile points (stemmed, side notched, and corner notched), 5 unifacially flaked stone tools, and 6 bifacially flaked stone tools.

Mesa Portales was identified by William Whatley, an archeologist who works for the Pueblo of Jemez, as culturally affiliated with either the Pueblo of Jemez, Pueblo of Santa Ana, or Pueblo of Zia. Representatives of the Hopi Tribe of Arizona presented written evidence that they are culturally affiliated with the Paleoindian, Archaic, Puebloan (Basketmaker, Hisatsinom (Anasazi), Mogollon, Sinaguan, Mimbres, Salado), Fremont, Hohokam, and Cohonino peoples, all of whom lived in the Southwestern United States. Representatives of the Acoma provided information about oral tradition that tells how they are culturally affiliated with all of the ancestral Puebloan people. Based on Zuni oral tradition, ethnographic documentation, historic documentation, archeological documentation, and other evidence, the Zuni Tribe claims cultural affiliation with prehistoric cultures of the Southwestern United States.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 24 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator, University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S– Denver, CO 80208–32406, e-mail jbernste@du.edu, telephone (303) 871–2543, before November 5, 2001. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: June 15, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–24931 Filed 10–3–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Williamson Museum, Northwestern State University of Louisiana, Natchitoches, LA, and in the Control of the Louisiana Division of Archaeology, Baton Rouge, LA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Williamson Museum, Northwestern State University of Louisiana, Natchitoches, LA, and in the control of the Louisiana Division of Archaeology, Baton Rouge, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Williamson Museum, Northwestern State University of Louisiana, and Louisiana Division of Archaeology professional staff in consultation with representatives of the Caddo Indian Tribe of Oklahoma.

In the 1960s, human remains representing one individual were excavated from the Mineral Springs site (3HO1), Howard County, AR, by Dr. Clarence H. Webb, who donated the remains to the Louisiana Division of Archaeology. The remains are curated at the Williamson Museum, Northwestern State University of Louisiana. No known individual was identified. No associated funerary objects are present.

The Mineral Springs site was a precontact settlement, dating to approximately A.D. 1300–1500, with some evidence for an earlier preceramic occupation of unknown age. Archeological research was conducted at the site between the 1920s and the 1960s and several publications have documented the collections, features, and burials. The information available on the human remains from Mineral Springs is insufficient to determine their exact provenience or age. The archeological evidence from the site, especially the ceramics, architecture, and mortuary patterns, demonstrates that this site was occupied by people of the ancient Caddoan culture found in the Red River Basin.

In the 1950s, human remains representing one individual were recovered from the Marston site (16RR1), Red River Parish, LA, by Dr. Clarence H. Webb, who donated the remains to the Louisiana Division of Archaeology. The remains are curated at the Williamson Museum, Northwestern State University of Louisiana. No known individual was identified. No associated funerary objects are present.

The remains were taken from an eroded area near the levee at the site. The Marston site is a Caddo I–II period site and the artifacts collected at the site suggest that the site dates to A.D. 1200–1500.

In 1941, human remains representing three individuals were recovered from the Lawton Gin site, Natchitoches Parish, LA, by Dr. Clarence H. Webb, who donated the remains to the Louisiana Division of Archaeology. The remains are curated at the Williamson Museum, Northwestern State University of Louisiana. No known individuals were identified. The 52 associated funerary objects are 47 glass beads, 3 Natchitoches Engraved bowls, 1 Keno Trailed bottle, and 1 Emory Incised-Punctated bowl.

The remains were taken from a pit for a cotton weighing scales at the site. The cultural context of the site is described below.

In the 1940s, human remains representing four individuals were recovered from the Southern Oil Mill and Compress site, Natchitoches Parish, LA, by Dr. Clarence H. Webb, Michael Beckman, and Robert Scott, who donated the remains to the Louisiana Division of Archaeology. The remains are curated at the Williamson Museum, Northwestern State University of Louisiana. No known individuals were identified. The 45 associated funerary objects are 40 glass beads, 1 Emory Punctated-Incised bowl, 1 plain (shell-tempered) bowl, 1 brass bracelet, 1 fragmentary iron and bead bracelet, and 1 iron bracelet.

These remains were taken from excavations for road construction. The Lawton Gin site and the Southern Oil Mill and Compress site are postcontact sites, dating to the 1700s. During consultations, the representatives of the Caddo Tribe identified these remains as Caddo and agreed that these sites represent the historic Natchitoches tribe. The archeological evidence from these and contemporaneous sites was used to define the Lawton Phase (A.D. 1714–1800), which has been culturally identified to the Natchitoches confederacy of the Caddo. Lawton Phase sites cluster around Natchitoches, LA, which was established as a French trading post in 1714. While other tribes visited the area to trade, the Native American settlements were Caddoan. The archeological evidence for the cultural continuity between Lawton Phase sites and the Caddo Tribe consists primarily of ceramic styles, vessel forms, and geographical locations. The historical record includes documentary and cartographic materials describing the Natchitoches confederacy of the Caddo Tribe, which lived along the Red River near Natchitoches, LA.

In the 1930s or 1940s, human remains representing one individual were excavated from the Belcher Mound site (16CD13), Caddo Parish, LA, by Dr. Clarence H. Webb, who donated the remains to the Louisiana Division of Archaeology. The remains are curated at the Williamson Museum, Northwestern State University of Louisiana. No known individual was identified. No associated funerary objects are present.

Between 1936–1954, 312 associated funerary objects were excavated from Belcher Mound site by Dr. Clarence H. Webb, who donated the human remains associated with these objects to the Louisiana State University Museum of Natural Science. The associated funerary objects were donated to the Louisiana Division of Archaeology and are curated at the Williamson Museum, Northwestern State University of Louisiana. The 312 associated funerary objects are 1 golden eagle skeleton, 2 animal tooth pendants, 61 mussel shell pendants, 3 shell pendants, 9 shell zoomorphic pendants, 1 eroded concretion, 3 antler projectile points, 5 Bassett points, 1 oval hammerstone, 1 deer ulna awl, 1 decorated bone disk, 1 bone earspool, 2 bone hair pins, 1 bone labret/ear ornament, 51 conch columnella beads, 6 small conch shell beads, 25 shell beads, 3 pearl beads, 27 shell inlays, 2 engraved conch cups, 1 perforated conch cup, 15 mussel shell tools, 1 shell hoe, 1 effigy vessel, 1 plain jar, 1 pottery vessel, 24 Belcher Engraved vessels (7 bottles and 17 bowls), 2 Belcher Engraved (?) bottles, 16 Hodges Engraved vessels (1 bottle, 1 compound vessel, 12 bowls, and 2 jars), 1 Sanders Redware bottle, 1 Wilder Engraved bottle, 6 Avery Engraved bowls, 1 Avery Engraved (redware) bowl, 3 Glassell Engraved bowls, 3 Taylor Engraved vessels (2 bowls and 1 bottle), 1 Crockett Curvilinear Incised jar, 5 Foster Trailed vessels (including 4 jars), 1 Hickory Engraved bottle, 1 Karnak Brushed-Incised cup, 1 Karnak Brushed jar, 1 Karnak vessel, 9 Belcher Ridged vessels (including 2 jars and 5 urns), 7 Cowhide Stamped vessels (including 3 jars and 2 urns), 2 Keno Trailed vessels (including 1 vase), and 1 Smithport Plain vessel.

The golden eagle skeleton was found with burial 18 at the site, and was transferred to the Williamson Museum in 1981. During consultations, the Caddo stated that they consider the Belcher Mound site a sacred site and,

consequently, consider these artifacts sacred. The golden eagle remains are considered especially sacred, and the Caddo will treat them as though they are human remains. The eagle skeleton has not been found to be either human remains or sacred under the definitions provided in NAGPRA, 43 CFR 10.2(d).

Officials of the Williamson Museum, Northwestern State University of Louisiana, and the Louisiana Division of Archaeology contacted the U.S. Department of the Interior, U.S. Fish and Wildlife Service regarding applicability of the Migratory Bird Treaty Act, the Bald Eagle Act, the Golden Eagle Act, and the Endangered Species Act. The U.S. Fish and Wildlife Service has determined that the Louisiana Division of Archaeology may transfer the golden eagle remains to the culturally affiliated Native American tribe.

The Belcher Mound site (A.D. 900–1700) is one of the best-documented Caddo sites, and its material culture sequence has defined the Belcher Phase (A.D. 1500–1700). The dating of the site and its contemporaries has been documented by radiocarbon dates, thermoluminescence dates, and ceramic seriation. The archeological evidence for the cultural continuity of Belcher Phase sites and the Caddo Tribe includes ceramic styles, vessel forms, geographical locations, architecture, and mortuary practices.

In 1935, 16 associated funerary objects were excavated at Smithport Landing, DeSoto Parish, LA, by Dr. Clarence H. Webb, who donated the human remains associated with these objects to the Louisiana State University Museum of Natural Science. The 16 associated funerary objects are 1 sandstone bead, 2 Hickory Engraved bottles, 1 bone bead, 4 plain vessels (1 bottle, 1 cup, and 2 bowls), 1 pottery bowl, 1 Punctated Rim bowl, 2 Smithport Plain bowls, 1 Wilkinson/Kiam bowl, 1 toy pottery bottle, 1 engraved bottle, and 1 Wilkinson Punctated toy vessel.

The Smithport Landing site is a Caddo I period site. Artifact styles suggest an Alto-Gahagan Phase (A.D. 900–1200) affiliation for this site.

In 1939–41, 383 associated funerary objects were excavated at Gahagan Mound, Red River Parish, LA, by Dr. Clarence H. Webb, who donated the human remains associated with these objects to the Louisiana State University Museum of Natural Science, and have been reported in a separate notice. The 383 associated funerary objects are 1 Hickory Engraved bottle, 1 bottle, 1 ceramic pipe stem fragment, 1 sandstone frog effigy pipe, 58 Alba points, 9 large Alba points, 13 Alba and Harrell points, 3 Hayes points, 3 Bayougoula points, 1 Gahagan biface, 5 Gahagan biface fragments, 23 Gahagan blade fragments, 8 points, 8 tan chert points, 1 quartz crystal mass/flakes, 10 antler arrow points/awls, 1 conjoined copper tubes (panpipes), 3 copper-covered wood claw effigies, 1 copper hand effigy, 1 copper-covered bone earspool, 3 copper-covered ear ornaments, 1 copper ear ornament, 1 copper-covered wooden bead, 16 copper sheets or rolls, 1 decorated strip of copper, 3 bone earplugs, 1 bone ear ornament, 1 ear ornament, 3 cog wheel shell ornaments, 1 shell ornament fragment, 10 flat bone pins, 1 cruciform flat pin, 2 bone pins, 17 bone pin fragments, 10 conch columnella beads, 129 marginella shell beads, 3 small sandstone hones, 2 white Catahoula sandstone hones, 1 ferruginous sandstone celt, 1 greenstone celt, 15 hammerstones, 1 hematite mano, 1 hematite plummet, 1 hematite slab, 4 galena masses, 1 beaver incisor, and 1 beaver tooth.

The Gahagan site is one of the earliest sites to be identified as part of the long Caddoan cultural sequence in northwestern Louisiana. It is the type site for the Caddo I Alto-Gahagan Phase, which dates to A.D. 900–1200.

At an unknown date, human remains representing a minimum of one individual were recovered from unknown location(s) in Caddo Parish, LA, by Dr. Clarence H. Webb, who donated the remains to the Louisiana Division of Archaeology. The fragmentary condition of the remains and the lack of documentation make it impossible to determine the number of individuals. The remains are curated at the Williamson Museum, Northwestern State University of Louisiana. No known individual was identified. No associated funerary objects are present.

Based on the above-mentioned information, officials of the Williamson Museum, Northwestern State University of Louisiana, and the Louisiana Division of Archaeology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 11 individuals of Native American ancestry. Officials of the Williamson Museum, Northwestern State University of Louisiana, and the Louisiana Division of Archaeology also have determined that, pursuant to 43 CFR 10.2(d)(2), the 808 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Williamson Museum, Northwestern State University of Louisiana, and the Louisiana Division of Archaeology have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Pete Gregory, Director, Williamson Museum, Northwestern State University of Louisiana, Natchitoches, LA 71497, telephone (318) 357–8170, or Dr. Tom Eubanks, Louisiana Division of Archaeology, P.O. Box 44247, Baton Rouge, LA 70804, telephone (504) 342–8170, before November 5, 2001. Repatriation of the human remains and associated funerary objects to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: June 19, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–24930 Filed 10–3–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Williamson Museum, Northwestern State University of Louisiana, Natchitoches, LA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Williamson Museum, Northwestern State University of Louisiana, Natchitoches, LA, that meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The ten objects from the U.S. Fish Hatchery site, Natchitoches Parish, LA, are glass beads.

These objects were removed in the 1930s, by George Williamson, a professor at Northwestern State University of Louisiana, during construction of the fish hatchery.

Museum records indicate that these beads were removed from a grave; no remains from the grave are held in the museum. Glass beads date to the postcontact period (post-A.D. 1540) when this area was occupied by the Caddo Tribe.

Based on the above-mentioned information, officials of the Williamson Museum have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 10 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Dr. Pete Gregory, Director, Williamson Museum, Northwestern State University of Louisiana, Natchitoches, LA 71497, telephone (318) 357–8170, before November 5, 2001. Repatriation of these unassociated funerary objects to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: June 28, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–24935 Filed 10–3–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), and Glen Canyon Technical Work Group (TWG); Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Cancellation of meeting; Notice of public meeting.

SUMMARY: The Bureau of Reclamation is cancelling the Adaptive Management Work Group Meeting scheduled for September 24–25, 2001, in Phoenix, Arizona, in lieu of the tragic events of September 11, 2001, and a subsequent Government directive to curtail travel unless mission critical. The meeting will be rescheduled for January 2002 and will be noticed in the **Federal Register** when arrangements have been made.

DATES AND LOCATION: The Glen Canyon Dam Technical Work Group will conduct the following public meeting:

Phoenix, Arizona—November 13–14, 2001. The meeting will begin at 9:30 a.m. and conclude at 5 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: AMP 2003 Budget, Information Needs, Protocol Evaluation Panel (PEP) recommendations, GCMRC long-term monitoring plans, native fish recovery goals, reconsultation on Kanab ambersnail, basin hydrology, environmental compliance, 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 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.

ADDRESSES: To allow full consideration of information by the AMWG and TWG 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 84138–1147; 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 AMWG and TWG members at the meetings.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; *rpeterson@uc.usbr.gov.*

Dated: September 17, 2001.

Rick L. Gold,

Regional Director.

[FR Doc. 01–24938 Filed 10–3–01; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–897 (Final)]

Pure Magnesium From Russia

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On September 27, 2001, the Department of Commerce published notice in the **Federal Register** of a negative final determination of sales at less than fair value in connection with the subject investigation (FR 66 49347). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning pure magnesium from Russia (investigation No. 731–TA–897 (Final)) is terminated.

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

Issued: October 1, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–24941 Filed 10–3–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin (Phase 2)

AGENCY: United States International Trade Commission.

ACTION: Request for written submissions.

EFFECTIVE DATE: September 28, 2001.

SUMMARY: The Commission received a request from the United States Trade Representative (USTR) on September 28, 2001, to provide advice on the probable effect on U.S. trade under the North American Free Trade Agreement (NAFTA), total U.S. trade, and on domestic producers of certain modifications to the rules of origin in NAFTA Annexes 401 and 403. The USTR request states that most of these modifications are technical changes that will conform the NAFTA rules of origin to corresponding changes in the HTS due to revisions in Harmonized System nomenclature that are scheduled to take effect on January 1, 2002.

FOR FURTHER INFORMATION: Information may be obtained from David Lundy, Office of Industries (202–205–3439, or lundy@usitc.gov); and on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal (202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON-LINE) at *http://dockets.usitc.gov/eol/public.* Advice on a previous set of modifications (Phase 1) was provided to the USTR on September 14, 2001 and a public version of this report is available on the Commission's Internet server.

Background

According to the USTR's letter, U.S. negotiators have recently reached agreement in principle with representatives of the governments of Canada and Mexico on proposed modifications to Annex 401 of the NAFTA. Chapter 4 and Annexes 401 and 403 of the NAFTA contain the rules of origin for application of the tariff provisions of the NAFTA to trade in goods. Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 of the Act is that the President obtain advice from the United States International Trade Commission.

The USTR requested that the Commission provide advice on the probable effect on U.S. trade under NAFTA, total U.S. trade, and on domestic producers of the affected articles as a result of 311 proposed modifications to the rules of origin in NAFTA Annexes 401 and 403. A list of the proposed modifications is available from the Office of the Secretary to the Commission or by accessing the electronic version of this notice at the Commission's Internet site (*http://www.usitc.gov*). The current U.S. rules of origin can be found in general note 12 of the 2001 U.S. Harmonized Tariff Schedule (see ''General Notes'' link, *http://dataweb.usitc.gov/scripts/tariff/toc.html*).

The USTR request states that most of the modifications are technical changes that will conform the NAFTA rules of origin to corresponding changes in the HTS due to revisions in Harmonized System nomenclature that are scheduled to take effect on January 1, 2002.

As requested, the Commission will forward its advice to the USTR by October 24, 2001, and will release a public version of its advice as soon as possible thereafter.

Written Submissions

No public hearing is being scheduled in connection with preparing this advice. However, interested parties are invited to submit written statements (original and 14 copies) concerning any economic effects of the modifications. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be ensured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and must be received no later than the close of business on October 18, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: October 1, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–24929 Filed 10–3–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Under section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that on September 14, 2001, a proposed Consent Decree in *United States* v. *A–1 Auto Service, Inc.,* Civil Action No. 3:01CV1567(AHN), was lodged with the United States District Court for the District of Connecticut.

In this action, the United States sought recovery of over $1.6 million costs incurred by the United States Environmental Protection Agency in conducting a soil cleanup removal action at the National Oil Service Superfund Site in West Haven, Connecticut. The United States filed its complaint pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), seeking recovery of over $1.6 million. The complaint named over 400 defendants which disposed of waste oil at the Site. The proposed Consent Decree resolves the United States' cost recovery claims against all of those defendants. Under the proposed Decree, the settling defendants collectively agree to pay over $810,000 in partial reimbursement of the United States' response costs. The proposed Consent Decree also contains a settlement with two federal agencies, the United States Coast Guard and the United States Postal Service. Under the proposed Consent Decree, these two settling federal agencies agree to pay a total of $988.56.

The Department of Justice will receive for a period of thirty (3) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United*

States v. *A–1 Auto Service, Inc.,* D.J. Ref. 90–11–3–07333.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Connecticut Financial Center, New Haven, CT, and at U.S. EPA Region 1, One Congress Street, Boston, MA.

A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. For a copy of the proposed Consent Decree without the signature pages and attachments, please enclose a check in the amount of five dollars ($5.00) (25 cents per page reproduction cost) payable to the Consent Decree Library. For a copy of the Decree with all signature pages and attachments, please enclose a check in the amount of one hundred and twelve dollars and 25 cents ($112.25) payable to the Consent Decree Library.

Catherine R. McCabe,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–24790 Filed 10–3–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7. notice is hereby given that a proposed consent decree in *United States v. Caribbean Airport Facilities, Inc, and Anthony Tirri,* Civil Action No. 01–2178 (JAG) (D.P.R.), was lodged with the United States Court for the District of Puerto Rico on September 5, 2001. This proposed Consent Decree concerns a complaint filed by the United States against Caribbean Airport Facilities, Inc. and Anthony Tirri, pursuant to the Clean Water Act, 33 U.S.C. 1311 and 1344, to obtain injunctive relief from and impose civil penalties against the Defendants for the unauthorized discharge of pollutants into waters of the United States in the Municipality of Carolina, Puerto Rico, and for noncompliance with the conditions and limitations of two permits issued by the United States Army Corps of Engineers under 33 U.S.C. 1344(a).

The proposed Consent Decree, among other things, (1) enjoins the Defendants from taking any actions that would discharge dredge or fill material into waters of the United States except in compliance with a permit issued pursuant to 33 U.S.C. 1344, (2) provides for mitigation for the environmental harm caused by Defendants' past discharges, and (3) requires the Defendants to pay civil penalties in the amount of $300,000.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Scott Jordan, Senior Attorney, Environmental Defense Section, U.S. Department of Justice, P.O. Box 23986, Washington, D.C. 20026–3986. All comments must refer to *United States v. Caribbean Airport Facilities, Inc, and Anthony Tirri,* Department of Justice Reference No. 90–5–1–1–05837.

The proposed Consent Decree is on file at the Clerk's Office, United States District Court for the District of Puerto Rico at Frederico Degetau Federal Building, 150 Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918, and may be examined there to the extent allowed by the rules of the Clerk's Office. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/ltopics.htm.*

Mary F. Edgar,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 01–24792 Filed 10–3–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Kenneth McDonald and Nicholas Menegatos,* C.A. No. 3:CV–01–0510, was lodged on September 11, 2001, with the United States District Court for the Middle District of Pennsylvania. The consent decree resolves the United States' claims against Defendant Nicholas Menegatos for violations of the Clean Air Act, 42 U.S.C. 7401–7671q, and the National Emission Standards for Hazardous Air Pollutants for asbestos (''asbestos NESHAP''), 40 CFR part 61, with respect to the partial demolition of a facility, located in Tannersville, Pennsylvania.

Under the consent decree, Defendant Menegatos, based upon his ability-to-pay, has agreed to pay a civil penalty in the amount of $2700 and has agreed to take a training course that will familiarize him with the Clean Air Act and the asbestos NESHAP regulations.

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 Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Kenneth McDonald and Nicholas Menegatos,* C.A. No. 3:CV–01–0510, DOJ Reference No. 90–5–2–1–2217.

The proposed consent decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Harrisburg, Pennsylvania 17108; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–24791 Filed 10–3–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on August 20, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Flextronics International, Karlkrona, Blekinge Lan, Sweden; and Emergent Information Technologies, Colorado Springs, CO have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and

interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–24793 Filed 10–3–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on August 24, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tobias Maslak, Frauenau, Bavaria, Germany; Pietro Magnanini, Lucrezia, Italy; and Daniela Elena Popescu, Oradea, Bihor, Romania have been added as parties to this venture. Also Fujitsu Limited, Inagi-shi, Tokyo, Japan; Mburst, Inc. (formerly known as MicroBurst, Inc.), Rockville, MD; Toshiba Tec Corporation, Minato-ku, Tokyo, Japan; and USA Technologies, Inc., Wayne, PA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on May 23, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 2001 (66 FR 35459).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–24794 Filed 10–3–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 27, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: Notice of Alleged Safety and Health Hazards, OSHA–7 Form.

OMB Number: 1218–0064.

Affected Public: Individuals or households.

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 55,132.

Number of Annual Responses: 55,132.

Estimated Time Per Response: Varies from 15–25 minutes.

Total Burden Hours: 14,767.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $882.

Description: The Occupational Safety and Health Act, Section 8(f)(1) and 29 CFR 1903.11(a) and (c) authorizes employees or representative of employees to report an alleged violation of a safety and health standard to OSHA. The OSHA–7 Form is one mechanism for reporting alleged violations. The Form also provides an employer with notice of the complaint. The information is used by OSHA to evaluate the alleged hazards to determine if reasonable grounds exist to conduct an inspection of the workplace.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–24829 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,839 and NAFTA–4547]

ASARCO, Inc., East Helena Plant, East Helena, MT; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 31, 2001, the company requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition TA–W–38,839, and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) under petition NAFTA–4547. The denial notices applicable to workers of ASARCO Inc., East Helena Plant, East Helena, Montana, were signed on April 17, 2001, and published in the **Federal Register** on May 3, 2001 (66 FR 22262).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at ASARCO Inc., East Helena Plant, East Helena, Montana, producing lead bullion (primary product produced at the plant), was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The subject plant customers are located outside the United States and therefore the company can not be impacted by customers purchasing imported lead bullion. The subject firm did not import lead bullion during the relevant period.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. A survey was not conducted due to the conditions depicted in the previous paragraph. The subject firm did not import lead bullion, nor was production of lead bullion shifted form the workers' firm to Mexico or Canada.

The petitioner alleges that other ASARCO Incorporated locations have been certified for Worker Adjustment Assistance and NAFTA-Transitional Adjustment Assistance. The certifications were based on different principle products, with a different customer base than the subject plants' customer base. The work performed at the subject plant is not vertically integrated into any of those products during the relevant period and therefore can not be associated with any of those certifications. Although the subject plant produced lead bullion for a certified facility, producing refined lead, ASARCO's Omaha, Nebraska (TA–W–35,300 and NAFTA–02752) those certifications expired on May 31, 1998. Therefore, the subject plant can not be considered vertically integrated, due to the time frame of that certification not being within under the relevant time frame.

The petitioner also alleges that the plant was impacted by depressed lead prices and events in international markets. Price and events in international markets are not factors which pertain to the ''contributed importantly'' criteria.

The Department, when determining import impact for a worker group, does consider import statistics for products similar to what the subject plant produces. U.S. import statistics for refined lead are available, however these statistics are not equivalent to the product (lead bullion—an intermediate product) the subject plant produced. Therefore, those statistics are not reflective of the plant's product. While U.S. import data are helpful in identifying trends in imports of specific products, in most cases, the Department relies on a survey of the major declining customers of the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, D.C., this 18th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24822 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,185; Cemex Kosmos Cement Co., Pittsburgh Plant, Pittsburgh, PA

TA–W–39,015; Wheeling Pittsburgh Steel Corp., Wheeling, WV And Operating at the Following Locations A; Beech Bottom, WV, B; Allenport, PA, C; Steubenville, OH, D; Martins Ferry, OH, E; Yorkville, OH

TA–W–39,769; Paxar Corp., Paxar Label Group Woven Division, Canton, NC

TA–W–39,499; Tescom Corp., High Purity Controls Division, Elk River, MN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,444; Berenfield Containers, Ltd, Masury, OH

TA–W–38,851; Norgen, Inc., Mt Clemens, MI

TA–W–39,651; Cranston Print Works, Webster, MA

TA–W–39,889; Wisne Automation and Engineering Co., Novi, MI

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–39,946; Valley Machining Co., Rock Valley, IA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–39,653; Covington Industries, Inc., New York, NY

TA–W–39,776; River Parishes Oil Co., Inc., Norco, LA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company

name and location of each determination references the impact date for all workers of such determination.

TA–W–39,203; Lobelson and McCabe, Inc., Chapel Hill, TN: April 24, 2000.

TA–W–39,727; Malbon, Inc., Hiram, GA: July 16, 2000.

TA–W–39,680; Great Lakes Stitchery, Manistee, MI: July 10, 2000.

TA–W–39,654; Wilcox Forging Co., Mechanicsburg, PA: July 1, 2000.

TA–W–39,825; Area Tool and Manufacturing, Meadville, PA: August 3, 2000.

TA–W–39,135; Brooke Glass Co., Inc., Wellsburg, WV: April 9, 2000.

TA–W–39,690; Atlas Bag, Houston, TX: July 3, 2000.

TA–W–39,900; Bonifay Manufacturing, Inc., Bonifay, FL: August 10, 2000.

TA–W–39,583; Visteon Systems LLC, Connersville, IN: June 21, 2000.

TA–W–39,809; KMA Manufacturing, Inc., Livingston, TN: July 24, 2000.

TA–W–39,691; Meadowbrook Co., Division of T.L. Diamond and Co., Spelter, WV: July 12, 2000.

TA–W–39,309; Supreme Laundry and Reed Manufacturing Co., a/k/a D and G Investment Co., El Paso, TX: July 8, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of September, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05075; Wilcox Forging Co., Mechanicsburg, PA

NAFTA–TAA–05184; Wisne Automation and Engineering, Novi, MI

NAFTA–TAA–04810; Lobelson and McCabe, Inc., Chapel Hill, TN

NAFTA–TAA–05175; Paxar Corp., Paxar Label Group—Woven Division, Canton, NC

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

NAFTA–TAA–05208; Dunlap Sales, Inc., Hopkinsville, KY

NAFTA–TAA–05166; TNT Logistics North America, Bloomington, IN

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05178; Timgley Rubber Corp., South Plainfield, NJ: July 27, 2000

NAFTA–TAA–05299; Meadowbrook Co., Division of T.L. Diamond and Co., Spelter, WV: July 12, 2000.

NAFTA–TAA–05169; A.O. Smith Corp., Electrical Products Co., Owosso, MI: August 1, 2000

NAFTA–TAA–04860; Supreme Laundry and Dry Cleaners, a/k/a D and G Investment Co., El Paso, TX: May 8, 2000

NAFTA–TAA–04837; FCI USA, Inc., Electrical Connectors, Hanover, PA: April 26, 2000

NAFTA–TAA–04952; Atlantic Wire and Cable Corp., College Point, NY: May 11, 2000

NAFTA–TAA–05143; Howes Leather Corp., 101 Meadow Street, Curwensville, PA: July 26, 2000

NAFTA–TAA–05123; Atlas Bags, Houston, TX: July 3, 2000. April 27, 2000.

I hereby certify that the aforementioned determinations were issued during the month of September, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 24, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24826 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4323 and TA–W–38,397]

Owens-Brockway, Glass Containers, Brockway, PA; Notice of Revised Determination on Reconsideration

By letter of April 5, 2001, the Glass, Molders, Pottery, Plastics & Allied Workers International Union requested administrative reconsideration of the Department's denial of North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) and Trade Adjustment Assistance (TAA), applicable to workers of Owens-Brockway, Glass Containers, Brockway, Pennsylvania. The notices were published in the **Federal Register** on April 5, 2001, NAFTA–4323 (66 FR 18118), and TA–W–38,397 (66 FR 18117).

The workers were primarily engaged in the production of glass bottles.

The workers were denied NAFTA–TAA on the basis that there was no shift in production to Mexico or Canada, nor were there company or customer imports of glass bottles from Mexico or Canada. The workers were denied TAA because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met.

The union request for reconsideration indicated that the subject plant imported glass bottles from South America. Upon further examination of available glass bottle import statistics, it is now apparent that aggregate U.S. imports of glass bottles increased significantly from Canada and Mexico during the relevant period. The review further depicts a meaningful increase in aggregate U.S. imports of glass bottles during the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is

concluded that the workers of Owens-Brockway, Glass Containers, Brockway, Pennsylvania, were adversely affected by increased imports (including those from Canada and Mexico) of articles like or directly competitive with glass bottles produced at the subject firm.

All workers of Owens-Brockway, Glass Containers, Brockway, Pennsylvania, who became totally or partially separated from employment on or after November 14, 1999, through two years from the date of certification, are eligible to apply for NAFTA–TAA under Section 250 of the trade Act of 1974; and

All workers of Owens-Brockway, Glass Containers, Brockway, Pennsylvania, who became totally or partially separated from employment on or after November 14, 1999, through two years from the date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24817 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,001]

Accuride International Incorporated, Charlotte, NC; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 21, 2001, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–39,001. The denial notice was signed on April 26, 2001 and was published in the **Federal Register** on May 9, 2001 (66 FR 23733).

The petitioner presented new information concerning possible increased company imports of the product produced by the subject plant.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 18th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24820 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigation is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided each request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 13th day of August, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 08/13/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
39,777	Allison Manufacturing (Wkrs)	McAllan, TX	07/25/2001	Printed Children's Apparel.
39,778	Coats North America (Co.)	Thomasville, GA	07/18/2001	Industrial Sewing Thread.
39,779	Albany Chicago Co. (Wkrs)	Pleasant Prairi, WI	07/27/2001	Custom Die Cast and Machined Components.
39,780	Huntsman Polymers Corp (Wkrs)	Odessa, TX	07/16/2001	Styrene Monomer.
39,781	American Components (Wkrs)	Dandridge, TN	08/02/2001	Automotive Lumbar Supports.
39,782	Con Agra Flour Milling (BCIWAM)	N. Kansas City, MO	08/01/2001	Milled Wheat Flour.
39,783	Plastic Source (Co.)	El Paso, TX	07/26/2001	Headlamp Parts.
39,784	Elcom, Inc. (Wkrs)	El Paso, TX	07/26/2001	Automotive Electronics.
39,785	GKN Sinter Metals (Wkrs)	St. Mary, PA	07/17/2001	Powder Metal Parts.
39,786	Alltrista Zinc Products (Wkrs)	Greeneville, TN	07/26/2001	Drawn Zinc Battery Shells.
39,787	Sheldahl, Inc. (Wkrs)	Britton, SD	07/30/2001	Flexible Printed Circuits.
39,788	Lancer Corp. (Wkrs)	San Antonio, TX	07/31/2001	Beverage—Fittings.
39,789	Guilford of Maine (Wkrs)	Guilford, ME	07/31/2001	Fabric for Office Furniture.
39,790	Vishay Cera-Mite (Wkrs)	Oconto, WI	07/24/2001	Electronic Capacitor.
39,791	Tri Cities Mfg. (Wkrs)	Tuscumbia, AL	07/26/2001	Brush Plate Assemblies.
39,792	Kinston Apparel (Wkrs)	Kinston, NC	07/30/2001	Men's Dress Shirts and boxer shorts.
39,793	Fourth Edition (Wkrs)	Terre Hill, PA	07/30/2001	Ladies Lingerie.
39,794	Advanced Refractory Tech. (Wkrs)	Buffalo, NY	07/30/2001	Aluminum Nitride Powder.
39,795	Garland Shirt (Wkrs)	Garland, NC	07/30/2001	Dress Shirts.

APPENDIX—Continued

[Petitions Instituted On 08/13/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
39,796	Scapa North America (Wkrs)	Watertown, NY	07/30/2001	Pressure Sensitive Tape.
39,797	Centennial Tool (Wkrs)	Meadville, PA	07/30/2001	Tool and Die and Component Tooling.
39,798	Friedrich and Dummick (Wkrs)	Millville, NJ	07/24/2001	Fiber Optics.
39,799	Greensboro Printing (Wkrs)	Greensboro, NC	06/22/2001	Labels and Information Sheets.
39,800	Van Mar, Inc (Wkrs)	East Brunswick, NJ	07/26/2001	Ladies' Underwear.
39,801	i2 Technologies (Wkrs)	Yorba Linda, CA	07/26/2001	Electronic Components.
39,802	Superior Dye (Wkrs)	Passaic, NJ	07/19/2001	Textile Dyeing and Processing.
39,803	New Monarch Machine Tool (UAW)	Cortland, NY	07/26/2001	CNC Maching Centers.
39,804	Kemet Electronics (Co.)	Greenville, SC	07/23/2001	Ceramic and Tantalum.
39,805	Donaldson Company (Co.)	Louisville, KY	07/27/2001	Panels, Hoppers, Fan Assemblies.
39,806	Kysor Panel Systems (WCTW)	Portland, OR	06/15/2001	Walk-in-Coolers and Freezers.
39,807	Water Wonders (Co.)	Santa Marcia, CA	04/25/2001	Water Fountains.
39,808	Briggs and Stratton Corp. (PACE)	Milwaukee, WI	07/30/2001	Small Gasoline Engines.
39,809	KMA Manufacturing (Co.)	Livingston, TN	07/24/2001	Men's and Ladies' Shirts.
39,810	Carpenter Technology (Co.)	Reading, PA	07/30/2001	Stainless Steel Bar, Rod and Wire.
39,811	Howes Leather (Wkrs)	Curwensville, PA	07/30/2001	Leather Products.
39,812	ACRO Industrial-Eastman (Co.)	Rochester, NY	07/29/2001	Steel.
39,813	Greenwood Mills (Co.)	Greenwood, SC	08/01/2001	Denim Cloth.
39,814	Tingley Rubber Corp. (Co.)	So. Plainfield, NJ	07/27/2001	Protective Rubber and PVC Footwear.
39,815	Yale Hoists (Co.)	Forrest City, AR	08/02/2001	Lever Operated Hoists.
39,816	CNB International, Inc (Wkrs)	Buffalo, NY	07/26/2001	Press and Metal Forming.
39,817	AMI Doduco (Co.)	Cedar Knolls, NJ	07/02/2001	Electrical Contact Parts.
39,818	CMI Industrial (Co.)	Clarkesville, GA	07/27/2001	Woven Filament Fabrics.
39,819	Engineered Sintered (Co.)	Troutman, NC	07/26/2001	Powdered Metal Automotive Components.
39,820	Tyco Electronics (Co.)	Shrewsbury, PA	07/24/2001	Molded Components for Connectors.
39,821	Clifton Walls Industries (Co.)	Clifton, TX	07/24/2001	Apparel.
39,822	Sweetwater Walls (Co.)	Sweetwater, TX	07/24/2001	Apparel.
39,823	Louisville/Saydah Home (Wkrs)	Eminence, KY	07/11/2001	Chairpads, Napkins and Placemats.
39,824	Amerbelle Corporation (UNITE)	Vernon, CT	08/01/2001	Textile Dyeing.
39,825	Area Tool and Mfg. (Co.)	Meadville, PA	08/03/2001	Precision Spare Parts—Electronics.
39,826	Henry Mfg.-Swat Fame (Wkrs)	Los Angeles, CA	08/01/2001	Children's and Ladies' Clothing.
39,827	South East Mat (Co.)	Crossville, TN	07/30/2001	Vinyl and Carpeted Floormats.
39,828	GSC Management Co. (Wkrs)	Enterprise, AL	07/27/2001	Ladies' Pants, Slacks and Shorts.
39,829	ACME Pattern (Wkrs)	Chicago Heights, IL	07/25/2001	Pattern Tooling.
39,830	Keller Ladders-Werner (Wkrs)	Swansboro, GA	07/18/2001	Aluminum Ladders.
39,831	Chipman Union (Co.)	Union Point, GA	08/06/2001	Socks.
39,832	Fiskars Consumer Products (Wkrs)	Wausau, WI	07/26/2001	Scissors and Scissors Components.
39,833	Plymouth Garment (Co.)	Plymouth, NC	08/03/2001	Children's Pants.
39,834	Westvaco Corporation (Co.)	Springfield, MA	08/01/2001	Polaroid Film Components.
39,835	Dyersburg Corporation (Co.)	Dyersburg, TN	07/19/2001	Knit Fabric.
39,836	Exide Technologies (Co.)	Oklahoma City, OK	07/19/2001	Lead Acid Batteries.

[FR Doc. 01–24825 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–33–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,642]

Global Tex LLC Doing Business as Bates of Maine Lewiston, ME; Notice of Revised Determination on Reconsideration

On July 20, 2001, the Department issued a notice of affirmative determination regarding application for reconsideration of the denial of trade adjustment assistance for workers of the subject firm. The notice was published in the **Federal Register** on August 15, 2001 (66 FR 42883).

The workers of Global Tex LLC, doing business as Bates of Maine, Lewiston, Maine, were engaged in employment related to the production of cotton blankets, throws and bedspreads. The petition was initially denied because the ''contributed importantly'' criterion of the Trade Act of 1974, as amended, was not met.

The production of bedspreads at Lewiston, Maine, accounted for the majority of output at the plant. The company provided revised information on their imports of bedspreads which shows that the company did not purchase imports in 1999. The company increased import purchases of bedspreads in 2000.

Examination of aggregate U.S. imports for consumption shows that from 1999 to 2000, imports of bedspreads of textile materials, not knitted or crocheted, increased in quantity and value.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with bedspreads produced by the subject firm contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of Global Tex LLC, doing business as Bates of Maine, Lewiston, Maine, who become totally or partially separated from employment on or after January 23, 2000, through two years from the date of this issuance, are eligible to apply for adjustment

assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24816 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,589]

Collins & Aikman Automotive Interior Systems, Canton, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 22, 2001, the United Steelworkers of America, Local 550–L (U.S.W.A.), requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 16, 2001, and published in the **Federal Register** on April 5, 2001 (66 FR 38589).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department initially denied the TAA to workers of the Collins & Aikman, Automotive Interior Systems, Canton, Ohio because the criterion (3) of the worker group eligibility requirement of section 222 of the Trade Act of 1974, as amended, was not met. The Department's investigation disclosed that layoffs at the plant were attributable to the company's decision to transfer production of automotive floor mats from the Canton plant to other domestic facilities. Also, the company did not import like or directly competitive products. The workers at the subject firm were engaged in employment related to the production of automotive floor mats.

The petitioner, U.S.W.A., asserts that imports of automobiles were a major factor in the closing of the facility. Imports of automobiles, however, is not a basis for certification of workers producing floor mats under the Trade Act of 1974.

Additionally, the U.S.W.A. believes that all of the facts may not have been considered in the Department of Labor's TAA petition denial. In support, the petitioner stated Akro, the former name of the subject firm, was an original equipment manufacturer of automobile floor mats for new and domestic cars. The petitioner also attached a copy of a handwritten note dated March 14, 2001, requesting information on any product lines that were shipped out of the country. Subsequently, petitioner submitted a letter dated March 28, 2001, stating that several car mats for Ford and Volvo automobiles were transferred to a company in Europe by Akro, thus, creating a loss of jobs for Collins & Aikman employees through imports. The petition investigation, however, revealed the Collins & Aikman plant in Canton, does not import products like or directly competitive with the automobile floor mats which were produced in that plant. Nor did the subject firm shift production of those articles from Canton, Ohio, to facilities outside of the United States.

Finally, U.S.W.A. adds that former employees of the Shenango Furnace Company, Denver, Ohio, were found eligible to apply for TAA when the company moved to another domestic site. The petitioner is advised Shenango employees are not relevant to the workers at the Collins & Aikman plant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24812 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–33–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,338]

Cooper Energy Services, Mount Vernon, OH; Notice of Negative Determination Regarding Application for Reconsideration

On April 10, 2001, the Department received a request from petitioner, for administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 16, 2001, and published in the **Federal Register** on April 16, 2001 (66 FR 19520).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department initially denied TAA to workers engaged in the production of compressors, used in the oil industry, at Cooper Energy Services, Mount Vernon, Ohio, because the criterion (3) of the worker group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. The subject firm, nor its customers, imported compressors.

The petitioner states that even though compressors are not being imported, the components that were machined in the Mount Vernon, Ohio, facility are now being machined in other countries and shipped back to Waller, Texas, for final assembly.

The petition was filed on behalf of the workers at the subject firm producing compressors, not machined components. Imports of materials to produce the finished articles is not relevant to this petition that was filed on behalf of workers producing compressors.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify

reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 14th day of September 2001.

Edward A. Tomchick,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 01–24824 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,592; TA–W–38,592A]

Exide Technologies, Automotive Battery Division, AKA GNB Batteries, Inc., AKA Exide Corporation Farmers Branch, TX; Exide Technologies Oklahoma City Distribution Center, AKA GNB Batteries, Inc., AKA Exide Corporation Oklahoma City, OK, Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on January 31, 2001, applicable to workers of Exide Technologies, Automotive Battery Division, aka GNB Batteries, Inc., aka Exide Corporation, Farmers Branch, Texas. The notice was published in the **Federal Register** on March 2, 2001 (66 FR 13086).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of lead acid batteries.

New information shows that worker separations occurred at the Oklahoma City Distribution Center of Exide Technologies, aka GNB Batteries, Inc., aka Exide Corporation, Oklahoma City, Oklahoma when it closed in August, 2001. The Oklahoma City, Oklahoma location provided warehousing and distribution services for Exide Technologies; production facilities including Farmers Branch, Texas.

Accordingly, the Department is amending the certification to cover the workers of Exide Technologies, Oklahoma City Distribution Center, aka GNB Batteries, Inc., aka Exide Corporation, Oklahoma City, Oklahoma.

The intent of the Department's certification is to include all workers of Exide Technologies, Automotive Battery Division, aka GNB Batteries, Inc., aka Exide Corporation who were adversely affected by increased imports of lead acid batteries.

The amended notice applicable to TA–W–38,592 is hereby issued as follows:

All workers of Exide Technologies, Automotive Battery Division, aka GNB Batteries, Inc., aka Exide Corporation. Farmers Branch, Texas (TA–W–38,592) and Exide Technologies, Oklahoma City Distribution Center, aka GNB Batteries, Inc., aka Exide Corporation, Oklahoma City, Oklahoma (TA–W–39,592A) who became totally or partially separated from employment on or after January 10, 2000, through January 31, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24818 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,600]

H.L. Miller and Son, Inc., Dallas, TX; Notice of Revised Determination of Reconsideration

By letter of April 18, 2001, the company, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on March 12, 2001, based on the finding that the workers do not produce an article within the meaning of section 222(3) of the Act. The denial notice was published in the **Federal Register** on April 16, 2001 (66 FR 19520).

To support the request for reconsideration, the company provided evidence to show that the subject facility was a manufacturer of ladies dresses and sportswear prior to the closure of facility. Aggregate U.S. imports of ladies dresses and sportswear increased significantly during the relevant period. The import to shipment ratio for ladies dresses and sportswear was greater than 150 percent during the 2000 period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at H.L. Miller and Son, Inc., Dallas, Texas, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of H.L. Miller and Son, Inc., Dallas, Texas, who became totally or partially separated from employment on or after January 18, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 20th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24815 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,157]

The Chinet Company, Now Known as Huhtamaki Food Service, Inc., Waterville, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 28, 2000, applicable to workers of The Chinet Company, Waterville, Maine. The notice was published in the **Federal Register** on February 15, 2000 (65 FR 7564).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of laminated molded fiber frozen food trays. The company reports that in June, 2001, The Chinet Company became known as Huhtamaki Food Service, Inc. as a result of a 1999 merger.

Information also shows that workers separated from employment at the subject firm, had their wages reported under a separate unemployment insurance (UI) tax account for Huhtamaki Food Service, Inc.

Accordingly, the Department is amending the certification determination to properly reflect this matter.

The intent of the Department's certification is to include all workers of The Chinet Company, now known as

Huhtamaki Food Service, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,157 is hereby issued as follows:

All workers of The Chinet Company, now known as Huhtamaki Food Service, Inc., Waterville, Maine who became totally or partially separated from employment on or after November 30, 1998, through January 28, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24813 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–33–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,815 and TA–W–38,815A]

Johnston Industries, Inc., Columbus, GA, Johnston Industries, Inc., New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 8, 2001, applicable to workers of Johnston Industries, Inc., Columbus, Georgia. The notice was published in the **Federal Register** on May 23, 2001 (66 FR 28554).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of industrial fabrics. The company reports that worker separations occurred at the New York, New York location of Johnston Industries, Inc. The New York, New York location provides marketing and sales functions directly supporting the subject firm's production facility in Columbus, Georgia.

Accordingly, the Department is amending the certification to include workers of Johnston Industries, Inc., New York, New York.

The intent of the Department's certification is to include all workers of Johnston Industries, Inc. adversely affected by increased imports of industrial fabrics.

The amended notice applicable to TA–W–38,815 is hereby issued as follows:

All workers of Johnston Industries, Inc., Columbus, Georgia (TA–W–38,815) and Johnston Industries, New York, New York (TA–W–38,815A) who became totally or partially separated from employment on or after February 15, 2000, through May 8, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24814 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,707]

Philips Consumer Electronics Company, Knoxville Industrial Design Group (KID), Knoxville, TN; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 8, 2001, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 9, 2001, and published in the **Federal Register** on May 2, 2001 (66 FR 22006).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department initially denied the TAA to workers of Philips Consumer Electronics Company, Knoxville Industrial Design Group (KID), Knoxville, Tennessee, based on the finding that the workers did not produce an article as required by Section 222(3) of the Trade Act of 1974, as amended.

The petitioner asserts that the subject firm is involved in the design and production of one-of-a-kind prototypes that were sent to the company headquarters or to third party companies, and thus the workers should be considered engaged in employment related to the production of a tangible product.

The Department concurs with the petitioner that the worker group could be considered engaged in employment related to the production of an article. The prototypes, however, were one-of-a-kind, and as such, were never mass produced. Furthermore, since the prototypes were one-of-a-kind, there could not be any imports of articles like or directly competitive with the prototypes constructed by the workers of the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24823 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment

Assistance, at the address shown below, not later than October 15, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of August, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 08/06/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
39,733	Raltron Electronics (Wrks)	Miami, FL	07/18/2001	Oscilatores.
39,734	Vale Hoists (Wrks)	Forrest City, AR	07/19/2001	Rope Hoists.
39,735	Atchison Products, Inc. (Wrks)	Boonville, MO	06/14/2001	Sports Bag, Tote Bags, Briefcases.
39,736	Air-Way Manufacturing Co. (Wrks)	Olivet, MI	07/21/2001	Hydraulic Fittings and Adapters.
39,737	Rebel Screeners, Inc. (Comp.)	Sharon, TN	07/17/2001	Screen Prints Sleepwear.
39,738	Progressive Tool and Die (Comp.)	Meadville, PA	07/12/2001	Seal Punch, Presses, Tooling.
39,739	Memc Southwest (Wrks)	Sherman, TX	07/11/2001	Wafer Fabrication.
39,740	Houze Glass Corp. (AFGWU)	Point Marion, PA	07/16/2001	Silkscreened Coffee Mugs and Glassware.
39,741	Stuckey Co., Inc. (Wrks)	Norman, OK	07/18/2001	Jewelry.
39,742	Republic Technologies (USWA)	Johnstown, PA	07/16/2001	Steel Billets.
39,743	DuPont Corp. (Comp)	Charleston, SC	07/18/2001	Polyester Fiber.
39,744	American Steel Foundry (Wrks)	Alliance, OH	06/25/2001	Steel Railroad Castings.
39,745	Sisco, Inc. (Wrks)	Tulsa, OK	07/13/2001	Repairing Molds.
39,746	Cody Energy LLC (Comp)	Denver, CO	07/24/2001	Oil and Gas.
39,747	Precision Flame, Inc. (Comp)	Bourbonnais, IL	07/08/2001	Flame Cut Steel Parts.
39,748	Engel Machinery, Inc. (Wrks)	York, PA	07/06/2001	Injection Molding Machines.
39,749	BHP Copper, Inc. (Comp)	Miami, AZ	07/11/2001	Copper.
39,750	ArvinMeritor, Light (Comp)	Pulaski, TN	07/18/2001	Vehicle Shock Absorbers.
39,751	Grover Industries, Inc. (Comp)	Grover, NC	07/19/2001	Spun Yarn.
39,752	Sola Optical USA, Inc. (Comp)	Eldon, MO	07/20/2001	Glass Ophthalmic Lenses.
39,753	Cumberland Wood Products (Wrks)	Helenwood, TN	07/18/2001	Wooden Reels and Spools.
39,754	Kellwood Co. (Comp)	Fernwood, MS	07/19/2001	Finished Swimwear.
39,755	Ethan Allen, Island Pond (Wrks)	Island Pond, VT	07/12/2001	Case Goods and Accent Pieces.
39,756	Kimberly Clark Corp. (Wrks)	Conway, AR	07/24/2001	Feminine Care Products.
39,757	International Paper (Comp)	Corinth, NY	07/24/2001	Specialty Coated Calendar Paper.
39,758	Citation (USWA)	Mansfield, OH	07/25/2001	Metal Parts of Autos and Trucks.
39,759	Delta Apparel (Comp)	Washington, GA	07/17/2001	Tee Shirts.
39,760	Kingfield Wood Products (Comp.)	Kingfield, ME	07/27/2001	Wood Components: Game Pieces, Furniture.
39,761	Shurmag Corp./WoodTek (Wrks)	No. Anson, ME	07/27/2001	Meter Boxes.
39,762	Edinboro Molding, Inc. (Comp)	Edinboro, PA	07/25/2001	Electronic Components.
39,763	West Bend Co. (The) (PACE)	West Bend, WI	07/25/2001	Electrical Kitchen Appliances.
39,764	Oxford Industries, Inc. (Comp)	Columbia, SC	07/30/2001	Ladies' Apparel.
39,765	Rugged Sportswear LLC (Comp)	LaGrange, NC	07/18/2001	T-Shirts, Sweat Shirts and Pants.
39,766	Yazoo Uniforms (Comp)	Yazoo City, MS	07/23/2001	Hospital Scrubs.
39,767	Bremen-Bowdon Investment (Comp)	Bowdon, GA	07/20/2001	Men's Suits and Sport Coats.
39,768	Power One (Wrks)	Allston, MA	07/20/2001	Board Mounted Power Supplies.
39,769	Paxar Fabric Label Group (Wrks)	Canton, NC	07/19/2001	Woven Fabric Labels.
39,770	Furnlite, Inc. (Wrks)	Fallston, NC	07/20/2001	Cabinet Lights and Powerstrips.
39,771	Stevens Lighting, Inc. (Comp)	Aberdeen, NC	07/20/2001	Lampshades.
39,772	Manitowoc Boom Trucks (Comp)	York, PA	07/27/2001	Pedestals and Turrets of Boom Cranes.
39,773	Russell Corp. (Comp)	Lafayette, AL	07/09/2001	T-Shirts and Sweatshirts.
39,773A	Russell Corp. (Co.)	Alexander City, AL	07/09/2001	T-Shirts and Sweatshirts & Yarn.
39,773B	Russell Corp. (Co.)	Sylacauga, AL	07/09/2001	T-Shirts and Sweatshirts & Yarn.
39,773C	Russell Corp. (Co.)	Alexander City, AL	07/09/2001	T-Shirts and Sweatshirts & Yarn.
39,774	Warner Electric Brake (USWA)	Roscoe, IL	06/26/2001	Electric Brakes and Clutches.
39,775	Harriet and Henderson (Comp)	Henderson, NC	07/24/2001	Cotton and Synthetic Yarn.
39,776	River Parishes Oil Co. (Comp)	Norco, LA	07/24/2001	Oil, Gasoline, Diesel.

[FR Doc. 01–24828 Filed 10–3–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 20th day of August, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 08/20/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
39,837	Wirtz Manufacturing Co. (Wrks)	Port Huron, MI	07/23/2001	Rubber Molds.
39,838	Craftline Wood Products (Co.)	Mt. City, TN	08/02/2001	Bird Houses, Bird Feeders.
39,839	Honeywell Advanced Circuit (Wrks)	Roseville, MN	08/03/2001	Printed Circuit Boards.
39,840	Mini Lace, Inc. (Wrks)	Hialeah, FL	08/03/2001	Lace.
39,841	Harney Coach Works (Wrks)	Hines, OR	07/12/2001	Motor Homes.
39,842	Dallas Semiconductor (Wrks)	Dallas, TX	08/01/2001	Integrated Circuits.
39,843	Ciba Specialty Chemicals (Wrks)	Old Bridge, NJ	08/08/2001	Water Treatment Chemicals.
39,844	Paramount Headwear, Inc. (Comp)	Marble Hill, MO	08/09/2001	Headwear.
39,845	RB and W Corp. (USWA)	Coraopolis, PA	08/06/2001	Fasteners for Auto Industry.
39,846	Neville Chemical Co. (USWA)	Pittsburgh, PA	08/06/2001	Hydro Carbon Resins.
39,847	United Tool and Die (Wrks)	Meadville, PA	07/30/2001	Plastic Injection Molds.
39,848	Trane Co. (IAMAW)	LaCrosse, WI	08/06/2001	Air Conditioning Equipment.
39,849	Square D Co. (Wrks)	Huntington, IN	08/06/2001	Transformers.
39,850	Seagate Technology (Wrks)	Shakopee, MN	07/24/2001	Magnet Assemblies.
39,851	Barko Hydraulics (Wrks)	Superior, WI	08/02/2001	Hydraulic Knuckleboom Loaders.
39,852	Alfred Angelo (UNITE)	Horsham, PA	08/07/2001	Wedding Gowns and Bridesmaid Gowns.
39,853	Altek, Inc. (Wrks)	Liberty Lake, WA	08/21/2001	Plastic Injection Molds.
39,854	Advanced Web Universal (Wrks)	Merriville, IN	08/03/2001	Slitting and Rewinding Machines.
39,855	Xerox Corp. (UNITE)	Oklahoma City, OK	08/01/2001	XP808 Resins.
39,856	Krisport, Inc. (Wrks)	Wheeling, WV	08/07/2001	Swimwear.
39,857	Matco East Distribution (Comp)	Verona, VA	08/09/2001	Touch Screen Monitors.
39,858	Fedders/Columbia Special (Wrks)	Columbia, TN	08/09/2001	Air Conditioners, Dehumidifiers Parts.
39,859	Modern Line Products (Wrks)	Indiana, MS	08/06/2001	Outdoor Power Equipment.
39,860	Sheftex USA, Inc. (Wrks)	St. Johnsbury, VT	08/03/2001	Comforters, Draperies.
39,861	Swimwear Anywhere, Inc. (UNITE)	Farmingdale, NY	07/31/2001	Ladies' Swimwear.
39,862	Jac Rosa Fashions, Inc. (UNITE)	Brooklyn, NY	07/31/2001	Ladies' Rainwear.
39,863	Lynn Ann Fashions (UNITE)	Brooklyn, NY	07/31/2001	Ladies' Dresses.
39,864	U.S. Consolidation, Inc. (UNITE)	Newark, NJ	07/31/2001	Ladies' Sportswear.
39,865	Schaevitz Sensors (Wrks)	Hampton, VA	08/07/2001	Electrical Sensors.
39,866	Halsey Drug Co., Inc. (Comp)	Brooklyn, NY	08/02/2001	Pharmaceuticals.
39,867	Glaxo SmithKline (Comp)	Piscataway, NJ	08/07/2001	Monosodiumticarcdillin.
39,868	Yarway Corp. (Comp)	Blue Bell, PA	08/08/2001	Steam Traps, Hancock Valves.
39,869	Cognis Corp., Lock Haven (Wrks)	Castanea, PA	08/08/2001	Dye Intermediates.
39,870	Grupo Mexico Asarco, Inc. (Wrks)	El Paso, TX	08/07/2001	Smelted and Refined Ore's Concentrates.
39,871	McCord Winn Textron (Comp)	Manchester, NH	08/08/2001	Automotive Fuel Pump Motors.
39,872	De-Sta-Co Manufacturing (Wrks)	Arden, NC	08/07/2001	Automotive Steel Valves.
39,873	Iomega Corp. (Wrks)	Ogden, UT	08/07/2001	Computer Peripherals.
39,874	Zinc Corp. of America (Wrks)	Hailesboro, NY	08/09/2001	Zinc Concentrate.
39,875	Maida Development Co. (Wrks)	Hampton, VA	08/09/2001	Electrical Cord Plugs.
39,876	Elastic Corp. of America (Comp)	Hemingway, SC	07/31/2001	Narrow Elastic Tapes.
39,877	Sweetheart Cup Co. (IBEW)	Springfield, MO	08/09/2001	Paper and Plastic Food Products.
39,878	Pennzoil/Quaker State (Wrks)	Shreveport, LA	08/08/2001	Gasolines, Diesel, Foodgrade Waxes.
39,879	Northwest Wood Products (Comp)	Kettle Falls, WA	08/07/2001	Decorative Wood Shelves.
39,880	Tuscarora Yarns, Inc. (Comp)	Kinston, NC	08/06/2001	Yarns.
39,881	Marley Cooling Tower Co. (BSOIW)	Louisville, KY	08/06/2001	Water Cooling Towers.

[FR Doc. 01–24827 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03607]

The Chinet Company, Now Known as Huhtamaki Food Service, Inc., Waterville, ME; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on January 28, 2000, applicable to workers of The Chinet Company, Waterville, Maine. The notice was published in the **Federal Register** on February 15, 2000 (65 FR 7565).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of laminated molded fiber frozen food trays. The company reports that in June, 2001, The Chinet Company became known as Huhtamaki Food Service, Inc. as a result of a 1999 merger.

Information also shows that workers separated from employment at the subject firm, had their wages reported under a separate unemployment insurance (UI) tax account for Huhtamaki Food Service, Inc.

Accordingly, the Department is amending the certification determination to properly reflect this matter.

The intent of the Department's certification is to include all workers of The Chinet Company, now known as Huhtamaki Food Service, Inc., who were adversely affected by an increase of imports from Canada.

The amended notice applicable to NAFTA–03607 is hereby issued as follows:

All workers of The Chinet Company, now known as Huhtamaki Food Service, Inc., Waterville, Maine who became totally or partially separated from employment on or after December 1, 1998, through January 28, 2002, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24819 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4418 and TA–W–38,516]

Owens Brockway, Glass Container Division, Fulton, NY; Notice of Revised Determination on Reconsideration

By letter of May 1, 2001, the Glass, Molders, Pottery, Plastics & Allied Workers International Union requested administrative reconsideration of the Department's denial of North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) and Trade Adjustment Assistance (TAA), applicable to workers of Owens Brockway, Glass Container Division, Fulton, New York. The notices were published in the **Federal Register** on May 2, 2001, NAFTA–4418 (66 FR 22007), and TA–W–38,516 (66 FR 22006).

The workers were primarily engaged in the production of glass bottles.

The workers were denied NAFTA–TAA on the basis that there was no shift in production to Mexico or Canada, nor were there company or customer imports of glass bottles from Mexico or Canada. The workers were denied TAA because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met.

The union request for reconsideration indicated that the subject plants' major customer imported glass bottles from South America and Mexico. Upon examination of 1999 and 2000 glass bottle import statistics, aggregate U.S. imports of glass bottles from Canada and Mexico increased significantly. The review further depicts a meaningful increase in aggregate U.S. imports of glass bottles during the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Owens Brockway, Glass Container Division, Fulton, New York, were adversely affected by increased imports (including those from Canada and Mexico) of articles like or directly competitive with glass bottles produced at the subject firm.

All workers of Owens Brockway, Glass Container Division, Fulton, New York, who became totally or partially separated from employment on or after December 1, 1999, through two years from the date of certification, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974; and

All workers of Owens Brockway, Glass Container Division, Fulton, New York, who became totally or partially separated from employment on or after December 1, 1999, through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of September 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–24821 Filed 10–3–01; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

AmerGen Energy Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of AmerGen Energy Company, LLC (the licensee), to withdraw its August 9, 2000, application for proposed amendment to Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, Pennsylvania.

The proposed amendment would have revised the Technical Specifications related to the independent onsite safety review group to indicate that these functions would now be performed by nuclear quality assurance personnel. This request was superceded in its entirety by the licensee's application dated August 14, 2001.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 18, 2000 (65 FR 62381). However, by letter dated August 14, 2001, the licensee superceded its previous submittal in its entirety and withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 9, 2000, and the licensee's letter dated August 14, 2001, which superceded in its entirety and withdrew the previous application

for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index/html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of September 2001.

For The Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 01–24868 Filed 10–3–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Entergy Nuclear Generation Co. Pilgrim Nuclear Power Station; Notice of Consideration of Approval of Transfer of Operating Authority Under Facility Operating License, Transfer of Materials License, and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 and other applicable regulations approving the transfer of operating authority under Facility Operating License No. DPR–35, and the transfer of Materials License No. 20–07626–04 for the Pilgrim Nuclear Power Station (Pilgrim) currently held by Entergy Nuclear Generation Company (ENGC), which is the owner of Pilgrim. The transfer of authority to operate Pilgrim and transfer of the materials license would be to Entergy Nuclear Operations, Incorporated (ENO). ENO is an indirect subsidiary of Entergy Corporation. The Commission is further considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by ENGC, ENGC's ownership of Pilgrim would be unchanged and ENGC would continue to be responsible for the costs associated with operating and maintaining Pilgrim. In addition, there would be no changes to existing decommissioning funding assurance arrangements. ENO would become a licensee, authorized to operate the unit and possess certain nuclear materials. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendments would replace references to ENGC in the licenses as the operator of Pilgrim with references to ENO, and otherwise substitute ENO for ENGC as appropriate in the licenses.

Pursuant to 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By October 24, 2001, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Douglas E. Levanway, Esq., counsel for ENGC, at Wise, Carter, Child, and Caraway, P.O. Box 651, Jackson, MS 39205 (tel: 601–968–5524; fax: 601–968–5519; e-mail: del@wisecarter.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by November 5, 2001, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated August 24, 2001, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available

records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland this 27th day of September 2001.

For the Nuclear Regulatory Commission.

Robert D. Starkey,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–24867 Filed 10–3–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, LLC and Midamerican Energy Company, Quad Cities Nuclear Power Station, Units 1 and 2; Revocation of Exemptions

1.0 Background

Exelon Generation Company, LLC (EGC, the licensee), is the holder of Facility Operating License Nos. DPR–29 and DPR–30, which authorize operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, or the Commission) now or hereafter in effect.

The facility consists of two boiling water reactors located in Rock Island County, Illinois.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), § 50.48, 10 CFR part 50, Appendix A, Criterion 3, and 10 CFR Part 50, Appendix R, establish requirements and design criteria for fire protection at operating nuclear power plants. Exemptions from certain of these regulations had previously been granted for Quad Cities. These exemptions are described as: (1) An exemption which allows fuse pulling to preclude operation of the reactor relief valves; (2) an exemption which allows for a lack of emergency lighting for suppression pool level instrumentation; (3) an exemption which allows a lack of suppression in the vicinity of electrical equipment; (4) an exemption which allows a lack of 3-hour fire barriers in fire zones 1.1.1.1 (Unit 1) and 1.1.2.1 (Unit 2); (5) an exemption which allows a lack of 3-hour fire barriers between redundant residual heat removal trains in the reactor building and turbine building (Units 1 and 2); (6) an exemption which allows for a lack of 3-hour fire barriers between equivalent fire area 23–1 (8.2.8.D) and the northern and central zone groups; (7) an exemption which allows for a lack of 3-hour fire barriers for certain 4-kV bus duct penetrations; (8) an exemption which allows a lack of 3-hour-rated dampers in certain standby gas treatment and reactor building ventilation ducts; and (9) an exemption which allows a lack of complete detection and suppression throughout the reactor building (Units 1 and 2).

The licensee evaluated the above exemptions using the NRC's guidance and concluded that the exemptions are no longer needed. Therefore, by adopting the letters dated June 2 and August 3, 2000, from the predecessor licensee of the facility, the Commonwealth Edison Company (ComEd), as supplemented by letters dated May 23 and September 18, 2001, the licensee requested revocation of the above exemptions. By letter dated February 7, 2001, EGC assumed responsibility for all pending NRC actions that were requested by ComEd.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. On June 23, 1983, July 21, 1988, and February 25, 1991, the NRC granted the above exemptions from the technical requirements of 10 CFR part 50, Appendix R, Section III.G or III.J, related to fire protection of safe shutdown capability or emergency lighting, respectively.

Through analysis or plant modification, the licensee has shown that the above exemptions are no longer required. The staff examined the licensee's rationale to support the exemption revocation requests. The staff concluded that the proposed revocations are acceptable because the licensee had established compliance with 10 CFR part 50, Appendix R, for these items.

The staff has prepared a safety evaluation describing its rationale in granting the requested exemption revocations. The safety evaluation may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Therefore, the staff concludes that the subject exemptions from the requirements of the regulations in 10 CFR part 50, Appendix R, are no longer required.

4.0 Conclusion

Accordingly, the Commission has determined that the exemptions granted June 23, 1983, July 21, 1988, and February 25, 1991, related to (1) fuse pulling to preclude operation of the reactor relief valves; (2) a lack of emergency lighting for suppression pool level instrumentation; (3) a lack of suppression in the vicinity of electrical equipment; (4) a lack of 3-hour fire barriers in fire zones 1.1.1.1 (Unit 1) and 1.1.2.1 (Unit 2); (5) a lack of 3-hour fire barriers between redundant residual heat removal trains in the reactor building and turbine building (Units 1 and 2); (6) a lack of 3-hour fire barriers between equivalent fire area 23–1 (8.2.8.D) and the northern and central zone groups; (7) a lack of 3-hour fire barriers for certain 4-kV bus duct penetrations; (8) a lack of 3-hour-rated dampers in certain standby gas treatment and reactor building ventilation ducts; and (9) a lack of complete detection and suppression throughout the reactor building (Units 1 and 2), are hereby revoked.

Pursuant to 10 CFR 51.32, the Commission has determined that the revocation of these exemptions will not have a significant effect on the quality of the human environment (66 FR 49218).

This exemption revocation is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of September 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 01–24869 Filed 10–3–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Exelon Generation Company, LLC; Peach Bottom Atomic Power Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix R, Section III.F, ''Automatic Fire Detection'', for Facility Operating Licenses Nos. DPR–44 and DPR–56, issued to Exelon Generation Company, LLC, et al. (the licensee), for operation of the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, located in York County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR part 50, Appendix R, Section III.F, ''Automatic Fire Detection,'' to the extent that they require the installation of automatic fire detection systems in certain areas that contain or present an exposure fire hazard to safety-related or safe shutdown systems or components. The licensee is seeking an exemption from the requirements for an automatic fire detection system for room 222, a Unit 2 feedwater heater room in the turbine building, and room 429, the Unit 2 and Unit 3 turbine generator hall in the turbine building.

The proposed action is in accordance with the licensee's application for exemption dated June 15, 2001.

The Need for the Proposed Action

The proposed exemption is needed in order to preclude dose exposure for workers during maintenance and testing of detection systems, and considerable expense, should plant modifications be required to be made.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that with the proposed exemption there will be an adequate level of fire protection and the underlying purpose of 10 CFR part 50, Appendix R, Section III.F, will be met for the affected areas of the plant such that there would be no significant increase in the risk of fires at this facility.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for PBAPS Units 2 and 3, dated April 1973.

Agencies and Persons Consulted

On August 15, 2001, the staff consulted with the Pennsylvania State official, Dennis Dyckman of the Pennsylvania Department of Environmental Protection, Nuclear Safety Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 15, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Public Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail at pdr@nrc.gov.

Dated at Rockville, Maryland, this 28th day of September 2001.

For the Nuclear Regulatory Commission.

John P. Boska,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–24865 Filed 10–3–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

TXU Electric; Comanche Peak Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to delete the anti-trust conditions contained in Appendix C to Facility Operating License (FOL) Nos. NPF–87 and NPF–89, issued to TXU Electric (the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, and issuance of associated conforming and nonconforming license amendments. CPSES, Units 1 and 2, are located in Somervell and Hood counties, Texas. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would delete the anti-trust conditions contained in Appendix C to the FOLs for CPSES, Units 1 and 2. The licensee has proposed to amend the FOLs to delete anti-trust conditions in the context of its application for the Commission's consent to transfer the FOLs to an affiliated generating company.

The proposed action is in accordance with the licensee's application dated June 19, 2001.

The Need for the Proposed Action

The proposed action is needed, according to the licensee's application, in order to, among other things, remove certain requirements that are no longer necessary following Texas's adoption of a comprehensive restructuring system.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed license amendments represent administrative actions which have no effect on plant equipment or operation.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in NUREG–0775, ''Final Environmental Statement Related to the Operation of Comanche Peak Steam Electric Station, Units 1 and 2,'' dated September 1981.

Agencies and Persons Consulted

On August 8, 2001, the staff consulted with the Texas State official, Mr. Arthur Tate of the Texas Department of Health, Bureau of Radiation Control regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 19, 2001. Documents may be examined, and/or copied for a fee, a the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Library component on the NRC Web site, http://www.nrc.gov (the Public Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of September, 2001.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–24866 Filed 10–3–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25197]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 28, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September, 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 23, 2001, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

IAI Investment Funds II, Inc. [File No. 811–7690]; IAI Investment Funds IV, Inc. [File No. 811–3004]; IAI Investment Funds VIII, Inc. [File No. 811–3767]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On September 18, 2000, each applicant transferred its assets to a corresponding series of Federated Equity Funds, based on net asset value. All expenses incurred in connection with the reorganizations were paid by Investment Advisers, Inc., applicants' investment adviser, and Federated Investors, parent company of the investment adviser to the acquiring funds.

Filing Date: The applications were filed on September 10, 2001.

Applicant's Address: 3700 U.S. Bank Place, 601 Second Avenue South, Minneapolis, MN 55402.

IAI Investment Funds I, Inc. [File No. 811–2747]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 18, 2000, applicant transferred its assets to Federated Bond Fund, a series of Federated Investment Series Funds, Inc., based on net asset value. All expenses incurred in connection with the reorganization were paid by Investment Advisers, Inc., applicant's investment adviser, and Federated Investors, parent company of the investment adviser to the acquiring fund.

Filing Date: The application was filed on September 18, 2001.

Applicant's Address: 3700 U.S. Bank Place, 601 Second Avenue South, Minneapolis, MN 55402.

IAI Investment Funds III, Inc. [File No. 811–4904]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 18, 2000, applicant transferred its assets to Federated International Equity Fund, a series of Federated International Series, Inc., based on net asset value. All expenses incurred in connection with the reorganization were paid by Investment Advisers, Inc., applicant's investment adviser, and Federated Investors, parent company of the investment adviser to the acquiring fund.

Filing Date: The application was filed on September 10, 2001.

Applicant's Address: 3700 U.S. Bank Place, 601 Second Avenue South, Minneapolis, MN 55402.

IAI Investment Funds VI, Inc. [File No. 811–5990]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 18, 2000, each of applicant's five portfolios transferred their assets to a corresponding series of Federated Equity Funds or Money Market Obligations Trust, based on net asset value. All expenses incurred in connection with the reorganization were paid by Investment Advisers, Inc., applicant's investment adviser, and Federated Investors, parent company of the investment adviser to the acquiring funds.

Filing Date: The application was filed on September 10, 2001.

Applicant's Address: 3700 U.S. Bank Place, 601 Second Avenue South, Minneapolis, MN 55402.

IAI Investment Funds VII, Inc. [File No. 811–2147]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 18, 2000, applicant transferred its assets to Federated American Leaders Fund, Inc., based on net asset value. All expenses incurred in connection with the reorganization were paid by Investment Advisers, Inc., applicant's investment adviser, and Federated Investors, parent company of the investment adviser to the acquiring fund.

Filing Date: The application was filed on September 10, 2001.

Applicant's Address: 3700 U.S. Bank Place, 601 Second Avenue South, Minneapolis, MN 55402.

Legg Mason Total Return Trust, Inc. [File No. 811–4308]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 14, 2001, applicant transferred its assets to Legg Mason American Leading Companies Trust, a series of Legg Mason Investors Trust, Inc., based on net asset value. Expenses of $168,748 incurred in connection with the reorganization were paid by applicant's principal underwriter, Legg Mason Wood Walker, Incorporated.

Filing Date: The application was filed on September 13, 2001.

Applicant's Address: 100 Light St., Baltimore, MD 21202.

Investment Series Trust [File No. 811–5093]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By October 12, 1994, each of applicant's three series had made a liquidating distribution to its shareholders based on net asset value. Applicant's investment adviser, Federated Investment Management Company, and/or its affiliates incurred all expenses in connection with the liquidation.

Filing Date: The application was filed on September 18, 2001.

Applicant's Address: Federated Investors Tower, 1001 Liberty Ave., Pittsburgh, PA 15222–3779

The Starburst Funds II [File No. 811–6119]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 12, 1995, applicant transferred its assets to Starburst Government Income Fund, a portfolio of the Starburst Funds, based on net asset value. Applicant's investment adviser, Compass Bank, and/or ;its affiliates incurred all expenses in connection with the reorganization.

Filing Date: The application was filed on September 18, 2001.

Applicant's Address: Federated Investors Tower, 1001 Liberty Ave., Pittsburgh, PA 15222–3779.

Scudder Weisel Capital Entrepreneurs Fund [File No. 811–10169]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 30, 2001, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $15,000 incurred in connection with the liquidation were paid by applicant's investment adviser, Scudder Weisel Capital LLC.

Filing Dates: The application was filed on July 26, 2001, and amended on September 13, 2001.

Applicant's Address: 88 Kearny St., Suite 2100, San Francisco, CA 94108.

Scudder Weisel Capital Funds [File No. 811–10251]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on July 26, 2001, and amended on September 13, 2001.

Applicant's Address: 88 Kearny St., Suite 2100, San Francisco, CA 94108.

Blanchard Funds [File No. 811–4579]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 27, 1998, applicant transferred its assets to Evergreen Equity Trust, Evergreen International Trust, Evergreen Municipal trust and Evergreen Fixed Income Trust, based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on August 31, 2001.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

Putnam Investment Grade Municipal Trust III [File 811–7099]

Summary: Applicant, a close-end management investment company, seeks an order declaring that it has ceased to be an investment company. On July 23, 2001, applicant transferred its assets to Putnam Municipal Bond Fund (formerly known as Putnam Investment Grade Municipal Trust II) (the ''Acquiring Fund'') based on met asset value. Applicant's preferred shareholders received preferred shares of the Acquiring Fund having an aggregate liquidation preference equal to the aggregate liquidation preference of applicant's outstanding preferred shares. Expenses of $444,000 incurred in connection with the reorganization were paid by applicant and the Acquiring Fund.

Filing Date: The application was filed on August 31, 2001.

Applicant's Address: One Post Office Square, Boston, MA 02109.

California Municipal Cash Trust [File No. 811–5760]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 12, 1994, applicant transferred its assets to California Municipal Cash Trust, a portfolio of Money Market Obligations Trust, based on net asset value.

Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on August 31, 2001.

Applicant's Address: 5800 Corporate Dr., Pittsburgh PA 15237–7000.

The Harvest Funds [File No. 811–9211]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 29, 2001, applicant transferred its assets to Calvert South Africa Fund, a series of Calvert Impact Fund, Inc., based on net asset value. Expenses of $19,770 incurred in connection with the reorganization were paid pro rata by applicant and the surviving fund.

Filing Date: The application was filed on August 29, 2001.

Applicant's Address: 112 Ballymeade Dr., Wilmington, DE 19810.

Automated Cash Management Trust [File No. 811–3351]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 28, 1994, applicant transferred its assets to Money Market Obligations Trust based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on August 31, 2001.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

New York Municipal Cash Trust [File No. 811–3432]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 2, 1994, applicant transferred its assets to Federated Municipal Trust based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Dates: The application was filed on August 6, 2001, and amended on September 26, 2001.

Applicant's Address: Federated Investors Tower, 1001 Liberty Avenue, Pittsburgh, PA 15222–3779.

Beacon Global Advisors Trust [File No. 811–7879]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 31, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $7250 incurred in connection with the liquidation were paid by applicant and its advisor, Beacon Global Advisors, Inc.

Filing Dates: The application was filed on August 29, 2001, and amended on September 21, 2001.

Applicant's Address: Beacon Global Advisors, Inc., 4550 Montgomery Ave., Suite 302N, Bethesda, MD 20814.

Targeted Duration Trust [File No. 811–6085]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By November 14, 1991, all shareholders of applicant had voluntarily redeemed their shares at net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on June 6, 2001, and amended on September 26, 2001.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24807 Filed 10–3–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44867; File No. SR–NASD–2001–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Code of Procedure Rule 9216 and NASD Code of Procedure Rule 9270 To Substitute the Office of Disciplinary Affairs for the Office of General Counsel for Review of Proposed Acceptance, Waivers and Consents, Proposed Minor Rule Violation Letters, and Offers of Settlement

September 27, 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 September 24, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

1. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Code of Procedure Rule 9216 and NASD Code of Procedure Rule 9270. The proposed amendments would substitute review by the Office of General Counsel (''OGC'') of proposed Acceptance, Waivers and consents (''AWCs''), proposed violation letters under the minor rule violation plan pursuant to NASD Code of Procedure Rule 9216 and Offers of Settlement pursuant to NASD Code of Procedure Rule 9270 (hereinafter referred to collectively as ''settlements'') with review by the Office of Disciplinary Affairs (''ODA'').

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

9200. Disciplinary Proceedings

* * * * *

9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d–1(c)(2)

(a) Acceptance, Waiver, and Consent Procedures

(1) No change

(2) No change

(3) If the member or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the National Adjudicatory Council. The Review Subcommittee or the [General Counsel] *Office of Disciplinary Affairs* may accept such letter or refer it to the National Adjudicatory Council. The Review Subcommittee may reject such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(4) If the letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the [General Counsel] *Office of Disciplinary Affairs,* it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Review Subcommittee or the National Adjudicatory Council, NASD Regulation may take any other appropriate disciplinary action with

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

[2] 17 CFR 240.19b–4.

[3] The Commission made various typographical and formatting changes and one change to the rule language of NASD Code of procedure Rule 9270(e)(3) at the request of the NASD. The changes are reflected in this notice. Telephone discussion between Shirley H. Weiss, Office of General Counsel, NASD Regulation, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (Sept. 25, 2001).

respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver,and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d–1(c)(2)

(1) No change

(2) No change

(3) If the member or associated person executes the minor rule violation plan letter, it shall be submitted to the National Adjudicatory Council. The Review Subcommittee or the [General Counsel] *Office of Disciplinary Affairs* may accept such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(4) If the letter is accepted by the National Adjudicatory council, the Review Subcommittee, or the [General Counsel] *Office of Disciplinary Affairs,* it shall be deemed final and the Association shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d–1(c)(2). If the letter is rejected by the Review Subcommittee or the National Adjudicatory council, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

* * * * *

9270. Settlement Procedure

(a) through (d) No change

(e) Uncontested Offers of Settlement

No change

(1) No change

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the National Adjudicatory Council. The Review Subcommittee of the [General Counsel] *Office of Disciplinary Affairs* may accept such offer of settlement and order of acceptance or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject such offer of settlement and order of acceptance or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council, the Review Subcommittee, or the [General Counsel] *Office of Disciplinary Affairs,* they shall become final and the [General Counsel] *Director of the Office of Disciplinary Affairs* shall issue the order and notify the Office of Hearing Officers.

(f) through (j) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulations included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to substitute OGS review of settlements with ODA review of settlements. This change in administrative practice would reduce certain duplications of effort in part of staff of ODA and OGC in the settlement review process, and it would also shorten the time that it generally takes to accept or reject a settlement. The proposed rule change would give ODA the sole responsibility for reviewing and approving proposed settlements and for referring selected proposed settlements to the National Adjudicatory Council (''NAC''), via the Review Subcommittee (''RSC''). Pursuant to Article V, Section 5.11 of the NASD Regulation By-Laws, the RSC is appointed by the NAC to determine whether disciplinary and membership proceedings decisions should be called for review by the NAC under the Rules of the Association and to perform any other function authorized by the Rules of the Association. The RSC is composed of no fewer than two and no more than four members of the NAC, and the number of non-industry members equals or exceeds the number of industry members. OGC will continue to act in its role as counsel to the NAC and the RSC.

Currently, all proposed settlements receive at least two layers of independent staff review in addition to the internal supervisory processes of the Departments of Enforcement and Market Regulation. ODA conducts the first review. ODA (formerly called the Office of Disciplinary Policy) was established in 1997 within the Office of the President. Its purpose is to participate in the case authorization process as an independent reviewer of complaints and settlements developed by the Departments of Enforcement and Market Regulation.[4] ODA currently has the authority either to (1) authorize a proposed settlement, in which case it is forwarded to the NAC (via OGC) for acceptance under NASD Code of Procedure Rule 9216 or NASD Code of Procedure Rule 9270, or (2) refuse to authorize a proposed settlement, in which case the matter is sent back to Enforcement or Market Regulation for further consideration.[5]

OGC serves as counsel to the NAC (via the RSC) in its review of proposed settlements authorized by ODA. NASD Code of Procedure Rule 9216 and NASD Code of Procedure Rule 9270 provide that OGC (on behalf of the NASD Regulation General Counsel) may accept settlements on behalf of the NAC or refer them to the RSC for acceptance or rejection, and the RSC may accept or reject settlement on behalf of the NAC.

The proposed rule change will revise the Code of Procedure to substitute ODA for OGC in the settlement process and give ODA the authority to accept, but not reject, settlements. If ODA determines not to accept a settlement, the Departments of Enforcement and Market Regulation will have the option either to renegotiate the settlement based on ODA's input or to submit the proposed settlement to the RSC. When matters are presented to the RSC, ODA and Enforcement and Market Regulation attorneys will present their positions to the RSC (in writing and orally), and

[4] In 1997 and 1998, ODA reviewed all complaints and proposed settlements for policy issues but formal authorization was handled by a Case Authorization Unit in the Department of Enforcement. The policy review and authorization functions were consolidated within ODA in January 1999. Securities Exchange Act Release No. 40864 (Dec. 30, 1998), 64 FR 1050 (Jan. 7, 1999) (File No. SR–NASD–98–90).

[5] In practice, the NAC generally does not review settlements, leaving that functions to OGC and the RSC.

OGC staff will act as advisor to the RSC. As is the case under the current system, the RSC will either accept or reject. ODA will also refer matters to the RSC that raise significant policy issues.

Pursuant to the proposal, OGC will continue to serve as counsel to the NAC and RSC on all adjudicative matters. OGC will advise the NAC and/or RSC on particular settlements as necessary, and it will bring significant policy issues to the NAC as required. OGC will also meet with ODA and Enforcement and Market Regulation management on a regular basis to discuss these significant issues. OGC will review all accepted settlements and identify trends, issues, and evidentiary and legal problems for the NAC.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) [6] of the Act, which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will reduce the current duplication of effort by ODA and OGC and shorten the time that it generally takes to accept or reject a settlement.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [7] of the Act and Rule 19b–4(f)(3) thereunder [8] as being concerned solely with the administration of the NASD. At any time within 60 days of the filing of such 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.[9]

IV. 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 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 NASD. All submissions should refer to File No. SR–NASD–2001–58 and should be submitted by October 25, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24808 Filed 10–3–01; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

[9] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44870; File No. SR–NASD–2001–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend Pilot Program Clarifying Nasdaq's Authority To Initiate and Continue Trading Halts

September 28, 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 September 27, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') 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 Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend a three-month pilot program regarding NASD Rule 4120, which clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. The purpose of this proposal is to extend the pilot for an additional three months, through January 27, 2002. There is no new proposed rule language. Nasdaq proposes no substantive changes to the existing pilot, other than to extend its operation through January 27, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for 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. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 11, 2001, Nasdaq filed with the Commission a proposed rule change

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked, and the Commission agreed, to waive the 5-day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(60(iii).

to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.[6] On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, which requested that the Commission approve the proposed rule change on a three-month pilot basis expiring on October 27, 2001.[7] Also on July 27, 2001, the Commission approved the proposed rule change and Amendment No. 1 [8] after finding that the proposed rule change was consistent with the requirements of the Act, including Section 15A of the Act.[9]

As a result of the decentralized and electronic nature of the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule change has been in effect, Nasdaq has not had occasion to initiate a trading halt under the rule. Nevertheless, Nasdaq believes that the rule is an important component of its authority to maintain the fairness and orderly structure of the Nasdaq market. Accordingly, Nasdaq believes the rule should remain in effect on an uninterrupted basis.

2. Statutory Basis

As the Commission found in its order approving the proposed rule change on a pilot basis, the proposed rule change is consistent with the provisions of Section 15A of the Act, which requires, among other things, that a registered national securities association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission found that the proposed rule change will provide Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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 designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] 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.

Nasdaq has requested that the Commission accelerate the operative date. The Commission finds good cause to waive the 30-day operative waiting period, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to operate through January 27, 2002 without interruption. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.[12]

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 submission 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 NASD. All submissions should refer to file number SR–NASD–2001–60 and should be submitted by October 25, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24809 Filed 10–3–01; 8:45 am]

BILLING CODE 8010–01–M

[6] Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001)(SR–NASD–2001–37)

[7] July 27, 2001 letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, Commission.

[8] Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (August 3, 2001) SR–NASD–2001–37).

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3364]

State of New York; (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated September 27, 2001, the above numbered declaration is hereby amended to include Delaware, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties in the State of New York due to damages caused by explosions and fires at the World Trade Center which occurred on September 11, 2001.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Broome, Chenango, Columbia, Greene, Otsego and Schohoarie in the State of New York; Fairfield and Litchfield Counties in the State of Connecticut; Berkshire County in the State of Massachusetts; Passaic and Sussex Counties in the State of New Jersey; and Pike and Wayne Counties in the State of Pennsylvania. All other

contiguous counties have been previously declared.

The economic injury numbers assigned are 9M8700 for Connecticut; 9M8800 for Massachusetts; and 9M8900 for Pennsylvania.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 10, 2001, and for economic injury June 11, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 28, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–24939 Filed 10–3–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3366]

Commonwealth of Virginia; Corrected Copy

As a result of the President's major disaster declaration on September 21, 2001, I find that Arlington County in the Commonwealth of Virginia constitutes a disaster area due to damages caused by explosions and fires occurring on September 11, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 21, 2001 and for economic injury until the close of business on June 21, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Fairfax County and the Independent Cities of Alexandria and Falls Church in the Commonwealth of Virginia; the District of Columbia; and Montgomery County in the State of Maryland.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 336604. For economic injury the number is 9M8300 for Virginia; 9M8400 for the District of Columbia; and 9M8500 for Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 28, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–24940 Filed 10–3–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3794]

Determination Regarding Export-Import Bank Financing of Certain Defense Articles and Services for the Government of Venezuela

Pursuant to section 2(b)(6) of the Export-Import Bank Act of 1945, as amended, Executive Order 11958 of January 18, 1977, as amended by Executive Order 12680 of July 5, 1989, and State Department Delegation of Authority No. 245 of April 23, 2001, I hereby determine that:

(1) The defense articles and services for which the Government of Venezuela has requested Export-Import Bank (Ex-Im) financing, air conditioning equipment and diesel engines for the modification of four armed Landing Ship, Tank (LST) vessels as part of an ongoing planned modification and upgrading of the vessels, are being sold primarily for anti-narcotics purposes.

(2) The sale of such defense articles and services is in the national interest of the United States.

(3) The requirements for a determination that the Government of Venezuela has complied with all U.S.-imposed end-use restrictions on the use of defense articles and services previously financed under the Act is inapplicable at this time because the four previous transactions have not been completed. Specifically, although Ex-Im has approved financing in connection with the refurbishment of 12 OV–10 aircraft, the refurbishment has not been completed; two 150-foot logistic support vessels sold with Ex-Im financing have not been delivered; parts financed by Ex-Im for the modification of four frigates have not been installed; and reverse osmosis water purification equipment for the four LSTs has not yet been delivered or installed.

(4) The requirement for a determination that the Government of Venezuela has not used defense articles or services previously provided under the Act to engage in a consistent pattern of gross violations of internationally recognized human rights is also inapplicable at this time. As stated above, Ex-Im financing has been used in connection with four defense articles or services transactions involving the Government of Venezuela. One transaction involves the refurbishment of aircraft, the second the delivery of two vessels, the third the modification of four frigates, and a fourth the modification of four LSTs, none of which has been completed.

This determination shall be reported to Congress and shall be published in the **Federal Register**.

Dated: June 19, 2001.

Richard L. Armitage,

Deputy Secretary of State, U.S. Department of State.

[FR Doc. 01–24909 Filed 10–3–01; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 3792]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: the FREEDOM Support Act/Future Leaders Exchange (FSA/FLEX) Program: Host Family and School Placement

NOTICE: Request for Grant Proposals.

SUMMARY: The Youth Programs Division of the Bureau of Educational and Cultural Affairs announces an open competition for the placement component of the FREEDOM Support Act/Future Leaders Exchange (FSA/FLEX) program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to recruit and select host families and schools for high school students between the ages of 15 and 17 from the New Independent States (NIS) of the former Soviet Union. In addition to identifying schools and screening, selecting, and orienting families, organizations will be responsible for: orienting students at the local level; providing support services for students; arranging enhancement activities that

reinforce program goals; monitoring students during their stay in the U.S.; providing re-entry training; and assessing student performance and progress. The award of grants and the number of students who will participate is subject to the availability of funding in fiscal year 2002.

PROGRAM INFORMATION:

Overview

Background: Academic year 2002/2003 will be the tenth year of the FSA/FLEX program, which now includes over 10,000 alumni. This inbound, academic year component of the NIS Secondary School Initiative was originally authorized under the FREEDOM Support Act of 1992 and is funded by annual allocations from the Foreign Operations and State Department appropriations. The goals of the program are to promote mutual understanding and foster a relationship between the people of the NIS and the U.S.; to assist the successor generation of the NIS in developing the qualities it will need to lead in the transformation of those countries in the 21st century; and to promote democratic values and civic responsibility by giving NIS youth the opportunity to live in American society and participate in focused activities for an academic year.

Objectives:

- To place approximately 1,200 pre-selected high school students from the NIS in qualified, well-motivated host families.
- To place students in schools that have been accredited by the respective state departments of education.
- To expose program participants to American culture and democracy through homestay experiences and enhancement activities that will enable them to attain a broad view of the society and culture of the U.S.
- To encourage FSA/FLEX program participants to share their culture, lifestyle and traditions with U.S. citizens.

Through participation in the FLEX program, students should:

1. Acquire an understanding of important elements of a civil society. This includes concepts such as volunteerism, the idea that American citizens can and do act at the grassroots level to deal with societal problems, and an awareness of and respect for the rule of law.

2. Acquire an understanding of a free market economy and private enterprise. This includes awareness of privatization and an appreciation of the role of the entrepreneur in economic growth.

3. Develop an appreciation for American culture and an understanding of the diversity of American society.

4. Interact with Americans and generate enduring ties.

5. Teach Americans about the cultures of their home countries.

6. Gain leadership capacity that will enable them to initiate and support activities in their home countries that focus on development and community service in their role as FLEX alumni.

Other Components: Two organizations operating as a consortium have been awarded grants to perform the following functions: recruitment and selection of students; targeting recruitment for students with disabilities; assistance in documentation and preparation of IAP–66 forms; preparation of cross-cultural materials; pre-departure orientation; international travel from home to host community and return; facilitation of ongoing communication between the natural parents and placement organization, as needed; maintenance of a student database and provision of data to the U.S. Department of State; and ongoing follow-up with alumni after their return to the NIS. Additionally, a separate grant will be awarded to conduct a one-week mid-year civic education program in Washington, D.C., for a select number of students who successfully compete for the Washington program. Most of the students with disabilities, as well as a select number of additional students who are identified as needing English language enhancement before entering their host communities, will attend a Language and Cultural Enhancement (LCE) program in July 2002, which will be conducted under a grant awarded exclusively for that purpose. The announcements of the competitions for these grants will be published separately.

Guidelines

Organizations chosen under this competition are responsible for the following:

(1) Recruitment, screening, selection, and NIS/FLEX-specific orientation of host families;

(2) Enrollment in an accredited school;

(3) Local orientation for participants;

(4) Placement of a small number of students with disabilities;

(5) Ensuring that all students identified for the pre-academic-year LCE program have their permanent year-long placement by the time they arrive at the LCE program in July;

(6) Specialized training of local staff and volunteers to work with FLEX students from the NIS;

(7) Preparation and dissemination of materials to students pertaining to the respective placement organization;

(8) Dispersal of program-specific information, such as alumni activity reports and School Administrator handbooks, to respective persons involved with the program (e.g., host families, school administrators, local coordinators);

(9) Program-related enhancement activities;

(10) Troubleshooting;

(11) Communication with the organizations conducting other program components, when appropriate;

(12) Evaluation of the students' performance;

(13) Quarterly evaluation of the organization's success in achieving program goals;

(14) NIS-specific re-entry training to prepare students for readjustment to their home environments.

Applicants may request a grant for the placement of at least 40 students. There is no ceiling on the number of students who may be placed by one organization. It is anticipated that approximately 10–15 grants will be awarded for this component of the FLEX program. Placements may be in any region in the U.S. Strong preference will be given to organizations that choose to place participants in clusters of at least three students. An option for clustering may include clustering a minimum of 60% of an organization's FLEX students and dispersing the remainder. Justification for choosing this option must be provided. Applicants must demonstrate that training of local staff ensures their competence in providing NIS-specific orientation programs, appropriate enhancement activities, and quality supervision and counseling of students from the NIS. Please refer to the Solicitation Package, available on request from the address listed below, for details on essential program elements, permissible costs, and criteria used to select students.

Grants should begin at the point that the complete applications on selected finalists are delivered to the placement organizations, no later than March 2002.

Most participants arrive in their host communities during the month of August and remain for 10 or 11 months until their departure during the period mid-May to late June 2003.

Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Applicants should submit the health and accident insurance plans they intend to use for students on this program. If use of a private plan is proposed, the State Department will compare that plan with the Bureau plan and make a determination of which will be applicable.

Participants will travel on J–1 visas issued by the State Department using a government program number. Organizations must comply with J–1 visa regulations in carrying out their responsibilities under the FLEX program.

Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Per capita costs should not exceed $5,300. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Allowable costs for the program include the following:

(1) A monthly stipend and a one-time incidentals allowance for participants, as established by the Department of State;

(2) Costs associated with student enhancement activities and orientations;

(3) Health and accident insurance.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–02–04.

FOR FURTHER INFORMATION, CONTACT: The Office of Youth Programs, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, S.W., Washington, DC 20547, tel. (202) 619–6299, and fax (202) 619–5311, e-mail *lbeach@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau of Education and Cultural Affairs Program Officer Anna Mussman on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, November 19, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. It is the responsibility of each applicant to ensure that the proposals are received by the above deadline. Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–02–30, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW, Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the State Department's Coordinator's Office and Public Diplomacy section at the U.S. embassy overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, host families, schools, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Organizations's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting and J–1 Visa requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. Submission of a sample FLEX-specific draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are highly recommended. Successful applicants will be expected to submit quarterly reports, which should be included as an inherent component of the work plan.

9. *Cost-effectiveness/cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation pertaining to the Department of State and FREEDOM Support Act appropriations.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: September 26, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–24746 Filed 10–3–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3793]

Bureau of Educational and Cultural Affairs Request for Grant Proposals in Support of the Regional Educational Advising Coordinator Program for the New Independent States (NIS REAC)

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Regional Educational Advising Coordinator for the Newly Independent States (NIS REAC) program grant. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals for the program of Regional Educational Advising Coordinator for the NIS region. The REAC program works to support and assist in the professional development of educational information centers in Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The REAC is a primary source of information related to educational advising for advisers in the field. The REAC manages a listserv and responds to adviser questions, oversees the production of a regional newsletter, and travels to centers to ensure that they are operating efficiently and effectively by conducting training and assessments. The REAC is responsible for maintaining the network of advising centers, coordinating training programs, and facilitating communication among advisers, U.S. Embassies, and the Bureau.

Program Information

Overview: The NIS REAC was created to coordinate and oversee the establishment of a network of educational information centers throughout the region. Advising centers first opened in the NIS in 1992, and the network has expanded each year. These centers provide accurate and unbiased information and advising about higher education in the U.S. and U.S. Government-sponsored exchange programs to all interested students and scholars. The REAC's mission is to continue to develop and strengthen this network of 60 educational information centers and to provide leadership and expertise in educational advising issues to centers and Public Affairs Sections. The REAC is responsible for providing onsite technical assistance and training to all centers in the U.S. Department of State-affiliated network.

The REAC should lend support to any affiliated center in the twelve countries comprising the NIS region, and must work impartially with all organizations involved in educational advising to help enable centers to provide accurate and timely information on U.S. higher educational opportunities. The REAC must work closely with the Bureau and Public Affairs Sections to help establish priorities for educational advising in the region. The REAC must be a U.S. citizen.

Guidelines: Pending availability of funds, the grant will begin January 1, 2002 and end December 31, 2002.

Responsibilities include:

1. Making site visits to educational information centers. In a grant year, a reasonable number of centers to visit is approximately 15–20; visits to more than one center may be combined in one trip when possible to maximize cost-efficiency. Centers to receive REAC site visits are determined by Bureau and U.S. Embassy requests and priorities, length of time since last REAC visit, and other special factors, such as the hiring of a new adviser or a move to a new location. Reports with recommendations should be sent to advisers, U.S. Embassies, and the Bureau at the conclusion of each site visit.

2. Providing information and guidance related to educational advising, as requested by centers, U.S. Embassies, and the Bureau.

3. Supervising production of a regional newsletter and maintaining an e-mail listserv for advisers.

4. Organizing and overseeing an internship training program (ITP) for approximately five beginning to mid-

level advisers in Moscow or another large center with senior-level experienced staff, and scheduling other ITPs as necessary.

5. Organizing in-country or sub-regional workshops, approximately 2–3 per year, or as determined in consultation with the Bureau and U.S. Embassies.

6. Participating in the NAFSA: Association of International Educators National Conference as a presenter and resource.

7. Evaluating the effectiveness and efficiency of the advising centers, making recommendations, and developing a plan for follow-up.

8. Working with the advising centers to promote the ECA Bureau priority of diversity by encouraging centers to conduct outreach activities to reach less-represented groups.

Qualifications required for the ideal candidate and sponsoring organization include:

1. Fluent Russian language and/or other regional language ability.

2. Knowledge of and experience with educational advising centers and activities .

3. Knowledge of U.S. higher education, including the application process, accreditation, financial aid, standardized testing requirements, distance education, etc.

4. Experience living and traveling in the NIS region, and a demonstrated willingness to undertake an ambitious travel schedule.

5. Organizational skills and institutional support needed to administer internship training programs and other training events.

6. Time management skills.

7. Experience as a trainer.

8. Excellent oral and written communication skills.

9. Computer/Internet/listserv skills.

10. U.S. citizenship.

Budget Guidelines

The Bureau's grant assistance, up to $150,000, is expected to constitute only a portion of the total funding; the Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets, and travel cost estimates. Allowable costs for the program include the following:

(1) REAC salary and benefits.

(2) Administrative assistant salary.

(3) Travel and per diem costs for site visits and training within the NIS region.

(4) Travel for REAC to attend NAFSA National Conference in San Antonio, TX for one week, and an additional week of REAC meetings in Washington, D.C. in May/June 2002.

(5) Program costs for internship training programs and other training workshops. This may include participant travel and per diem, supplies, venue costs, and honoraria for speakers.

(6) Office and administrative costs, including communication and equipment.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the title, ''Regional Educational Advising Coordinator for the Newly Independent States (NIS REAC),'' and reference number ECA/A/S/A–02–06.

FOR FURTHER INFORMATION, CONTACT: The Office of Global Educational Programs, Educational Information and Resources Branch, ECA/A/S/A, room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, phone: 202–619–5434, fax: 202–401–1433, *http://exchanges.state.gov/education/educationusa.* Please specify Bureau Program Officer Sharen Sheehan on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Monday, November 5, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and five copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–02–06, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and

''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. Please label diskettes ''Unclassified.'' These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs sections at U.S. Embassies for review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein

and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy Sections overseas.

Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content.

5. *Institutional Capacity and Experience:* Proposed personnel and institutional experience and resources should be adequate and appropriate to achieve the program or project's goals.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

7. *Cost-effectiveness:* The overhead and administrative components of the proposal should be kept as low as possible. All other items should be necessary and appropriate.

8. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation. Partial funding for this grant will be provided by FREEDOM Support Act funds.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: September 26, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 01–24747 Filed 10–3–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34094]

Santa Clara Valley Transportation Authority—Acquisition Exemption—Union Pacific Railroad Company

Santa Clara Valley Transportation Authority (VTA), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire Union Pacific Railroad Company's (UP) railroad right-of-way and certain related improvements located in Santa Clara County, CA (line). The line is located between the south side of San Carlos Avenue at approximately UP milepost 0.08, in San Jose, and the northerly boundary of the State Route 85 overpass at approximately UP milepost 5.77, in Vasona. VTA also will be acquiring UP's trackage, but not the underlying real estate constituting the right-of-way, between the point of switch off the UP Peninsula Corridor Main Line, at approximately UP milepost 0.00, and approximately UP milepost 0.08, on the Vasona Branch. The total distance of the right-of-way and trackage being acquired by VTA is approximately 5.8 route miles. VTA is acquiring the line in order to construct and operate an extension to its light rail transit system on a portion of the right-of-way. UP will retain a perpetual, exclusive easement for the continuation of freight rail service on the line. VTA will not obtain the right or obligation to conduct freight rail service on any portion of the line.

While the verified notice of exemption failed to indicate the proposed time schedule for consummation of this transaction, the earliest the transaction could be consummated was September 14, 2001, the effective date of the exemption. *See* 49 CFR 1150.33(e)(2).

If the notice contains false or misleading information, the exemption is void *ab initio.*[1] Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34094, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Second Floor, Washington, DC 20036.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: September 26, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–24687 Filed 10–3–01; 8:45 am]

BILLING CODE 4915–00–P

[1] A motion to dismiss has been filed by VTA in this proceeding. The motion will be addressed in a subsequent Board decision.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 27, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 5, 2001 to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–0164.

Form Number: TD F 90–22.50.

Type of Review: Extension.

Title: Reporting and Procedures Regulations 31 CFR Part 501.

Description: Submissions will provide the U.S. Government with information to be used in enforcing various economic sanctions programs administered by the Office of Foreign Assets Control (OFAC) under 31 CFR Part 501.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government.

Estimated Number of Respondents/Recordkeepers: 13,125.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 15 minutes.

Frequency of Response: On occasion, Annually.

Estimated Total Reporting/Recordkeeping Burden: 26,250 hours.

OMB Number: 1505–0177.

Form Number: None.

Type of Review: Extension.

Title: Procedures for Payments to Persons Who Hold Certain Categories of Judgments Against Cuba or Iran.

Description: Submissions will provide the U.S. Government with information to be used in determining the eligibility of an applicant under Sec. 2002 of Public Law No. 106–386 (The Victims of Trafficking and Violence Protection Act of 2000) and to complete processing of payments under Sec. 2002.

Respondents: Individuals or households.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 12 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 240 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–24881 Filed 10–3–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held October 31, 2001.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on October 31, 2001, in Room 4200E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 694–1861 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on October 31, 2001, in Room 4200E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Daniel L. Black, Jr.,

Chief, Appeals.

[FR Doc. 01–24912 Filed 10–3–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
October 4, 2001

Part II

Federal Retirement Thrift Board

5 CFR Part 1604
Uniformed Services Accounts; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1604

Uniformed Services Accounts

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is adding regulations explaining the rules under which members of the uniformed services can participate in the Thrift Savings Plan (TSP).

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest on (202) 942–1661.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal employees which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

The National Defense Authorization Act for Fiscal Year 2000, Public Law 106–65, 113 Stat. 512, as amended by the National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398, 114 Stat. 1654, extended the opportunity to participate in the TSP to uniformed services members. The uniformed services include the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration (NOAA). Therefore, beginning on October 9, 2001, uniformed services members can elect to contribute to the TSP, with contributions to commence in January 2002. Generally, uniformed services members are covered by the TSP regulations found at 5 CFR chapter VI. However, they will contribute to the TSP under rules that differ substantially from those that apply to civilian accounts; this rule supplements TSP regulations to explain those differences.

On May 1, 2001, the Board published a proposed rule in the **Federal Register** (66 FR 21693). After that publication date, the Internal Revenue Code (I.R.C.) was amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107–16, 115 Stat. 38. Some of those amendments affect the TSP, and this final rule reflects those changes. This final rule also makes several changes to the proposed rule for the purpose of clarification and to address comments submitted to the TSP from a Federal agency. With those changes, which are described below, the Board is adopting the proposed rule as final.

Internal Revenue Code Provisions

Under 26 U.S.C. 401(a)(31), certain distributions from the TSP can be transferred directly to an Individual Retirement Account (IRA) or another ''eligible retirement plan'' as defined in the I.R.C. at 26 U.S.C. 402(c)(8)(B). The EGTRRA amended the definition of eligible retirement plan for tax years beginning in 2002 by adding two types of retirement plans into which TSP funds can be transferred, an annuity contract described in 26 U.S.C. 403(b) and an eligible deferred compensation plan established under 26 U.S.C. 457(b). *See* EGTRRA, sections 641(a)(1)(A), (a)(2)(A), and (b), 115 Stat. 118–20, to be codified at 26 U.S.C. 457(e)(16), and 402(c)(8)(B)(v)–(vi), respectively. (Generally, a section 403(b) annuity is purchased for an employee of a tax exempt organization or public school; a section 457 plan is a deferred compensation plan for a state or local government or tax-exempt organization.) The final rule thus contains a new definition of ''eligible retirement plan'' at § 1604.2 which incorporates those changes made to the Internal Revenue Code.

Proposed § 1604.4(a)(2)(i) explains that TSP contributions are subject to the I.R.C. elective deferral limit found at 26 U.S.C. 402(g). Final § 1604.4(a)(2)(i) describes the new elective deferral limit for tax years beginning in 2002, which was established by section 611(d) of the EGTRRA, 115 Stat. at 97–8, to be codified at 26 U.S.C. 402(g)(1) and (g)(5).

Proposed § 1604.4(a)(2)(ii) discusses 26 U.S.C. 457, which could have affected members of the uniformed services contributing to both the TSP and to a section 457 plan by limiting the total dollar amount of their contributions to both plans to $8,500. The final rule deletes proposed § 1604.4(a)(2)(ii) because the EGTRRA repealed the provision in section 457 which linked TSP contribution to the section 457 contribution limit. *See* EGTRRA, section 615, 115 Stat. 102, to be codified at 26 U.S.C. 457(c).

Proposed § 1604.4(a)(2)(iii) explains that 26 U.S.C. 415 limits the amount that a participant can contribute to the TSP and to other Federal civilian retirement systems. Effective for tax year 2002, the EGTRRA raised those contribution limits. *See* sections 611(b)(2), 632(a)(1), 115 Stat. at 97, 113, to be codified at 26 U.S.C. 415(c)(1). Therefore, proposed § 1604.4(a)(2)(iii) was rewritten for the final rule to describe the new limit; it was also renumbered, replacing the deleted § 1604.4(a)(2)(ii).

Proposed §§ 1604.7(c), 1604.8(c) and 1604.9(c) state that the TSP will not transfer combat zone contributions (as defined in § 1604.2) to an IRA or other eligible retirement plan. Those sections are based on 26 U.S.C. 402(c)(2), which only permits the transfer of sums that are included in gross income (combat zone contributions are not included in gross income). However, effective January 1, 2002, amendments to section 402(c)(2) will permit IRAs and other eligible retirement plans to accept after-tax contributions (if they choose to do so), and thus will permit the transfer of TSP combat zone contributions if the transferee IRA or other eligible retirement plan will accept non-taxable monies. *See* EGTRRA, section 643(a), 115 Stat. at 122, to be codified at 26 U.S.C. 402(c)(2). Therefore, final §§ 1604.7(c), 1604.8(c) and 1604.9(c) state that combat zone contributions can be transferred to an IRA or other eligible retirement plan if the receiving trustee will accept such funds.

Under current 26 U.S.C. 412(a)(9), the surviving spouse of a TSP participant can only transfer a TSP death benefit to an IRA (to the exclusion of other eligible retirement plans), and proposed § 1604.8(c) explains that limitation. The EGTRRA eliminated this limitation for tax years beginning in 2002, *see* section 641(d), 115 Stat. at 120, to be codified at 26 U.S.C. 402(c)(9). Therefore, final §§ 1604.8(c) and (d) explain that a surviving spouse can transfer a TSP death benefit to either an IRA or to another eligible retirement plan, including the TSP.

Definitions

The definition of ''combat zone contributions'' found in proposed § 1604.2 implies that only members of the armed forces can earn them. However, all members of the uniformed lservices may earn combat zone contributions; therefore, the implication to the contrary is removed from the final rule. The final rule also contains a more accurate definition of ''separation from service.''

Contributions

Proposed § 1604.3(e) explains that TSP contributions can be made from basic pay, incentive pay, and special pay (including bonuses). However, the proposed section does not explicitly

state that a member of the uniformed services must be making TSP contributions from basic pay in order to contribute to the TSP from incentive pay or special pay. Therefore, a sentence was added to final § 1604.3(e) to state this rule explicitly.

Court Orders

A TSP account can be divided in an action for divorce, annulment, or legal separation, and is subject to legal process relating to alimony, child support, or child abuse. Proposed § 1604.9(b) states that a payment made pursuant to a court order or legal process will be made pro rata from all contribution sources, including combat zone contributions. The Board has determined that the TSP can honor a court order or legal process that apportions combat zone contributions between the participant and the payee; therefore, final § 1604.9(b) states that a pro rata payment will be made unless the court order or legal process directs otherwise.

TSP Loans

Proposed § 1604.5(a)(2) states that a TSP loan can be obtained by active duty members of the uniformed services and inadvertently seems to exclude members of the Ready Reserve from loan eligibility. Final § 1404.5(a)(2) states that members of the uniformed services in any pay status may obtain a TSP loan. In addition, proposed § 1604.10(c) explains how non-taxable combat zone contributions will be accounted for when a participant receives a TSP loan. Final § 1604.10(c) was revised to discuss only loans that are not repaid (and which are therefore deemed to be taxable distributions).

Spousal Rights

Proposed § 1604.5(b) explains that uniformed services and civilian TSP account balances can be combined. Paragraph (b)(4) of that section states that a participant with a TSP account balance in excess of $3,500 must obtain spousal consent before transferring those funds between civilian and uniformed services TSP accounts. The Board has determined that a narrower rule is appropriate.

The spouse of a member of the uniformed services has the same rights with respect to his or her spouse's TSP account as the spouse of a TSP participant who is covered under the Federal Employees' Retirement System (FERS). Specifically, a FERS-covered participant must obtain his or her spouse's consent before obtaining a TSP loan or an in-service withdrawal, and the spouse is entitled to a joint life annuity if the participant elects to receive a post-employment withdrawal. Because these rights do not change when funds are transferred between uniformed services accounts and FERS-covered accounts, it is not necessary to require spousal consent for those transfers.

In contrast, the spouse of a TSP participant who is covered under the Civil Service Retirement System (CSRS) is entitled only to notice that the participant has received a TSP loan or withdrawal. It is unnecessary to require a participant to obtain spousal consent before he or she can move funds from a CSRS-covered TSP account into a uniformed services TSP account because the transferred funds will become subject to more stringent spousal rights rules. However, it is necessary to require spousal consent before a participant can move funds from a uniformed services account into a CSRS-covered TSP account because the transferred monies will become subject to the less stringent CSRS spousal protection rights. Therefore, final § 1604.5(b)(4) requires spousal consent only for transfers from uniformed services TSP accounts to CSRS-covered TSP accounts.

Comments on the Proposed Rule

The Board received one comment on the proposed rule from a Federal civilian agency with uniformed services members. The commenter's first remarks pertain to § 1604.4(a)(1), which describes the temporary percentage (of basic pay) limitations on TSP contributions by members of the uniformed services beginning with 2001, and states that this limit will increase ''one percent'' each year until 2005. The commenter wrote that the section should begin with 2002, as that is when uniformed services contributions will commence, and suggested that the yearly contribution limit increase should be described as ''one percentage point'' each year until 2005. Another suggestion from the commenter pertains to § 1604.4(b), which states that the secretaries of the military departments may authorize TSP matching contributions. The commenter noted that it is not only the secretaries of the military departments but also the Secretaries of Transportation, Commerce, and Health and Human Services who may authorize matching contributions for members of the Coast Guard, NOAA, and the Public Health Service, respectively. The Board agreed with the comments and incorporated all the suggestions into § 1604.4 of the final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1604

Employment benefit plans, Government employees, Military personnel, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Board adds a new 5 CFR part 1604 to read as follows:

PART 1604—UNIFORMED SERVICES ACCOUNTS

Sec.

1604.1 Applicability.
1604.2 Definitions.
1604.3 Contribution elections.
1604.4 Contributions.
1604.5 Separate service member and civilian accounts.
1604.6 Error correction.
1604.7 Withdrawals.
1604.8 Death benefits.
1604.9 Court orders and legal processes.
1604.10 Loans.

Authority: 5 U.S.C. 8474(b)(5) and (c)(1); sec. 661(b), Pub. L. 106–65, 113 Stat. 512, 672 (5 U.S.C. 8440e).

§ 1604.1 Applicability.

This part describes the special features of TSP participation applicable to members of the uniformed services. Uniformed services members are also covered by the other regulations of 5 CFR chapter VI to the extent they do not conflict with the regulations of this part.

§ 1604.2 Definitions.

As used in this part:

Basic pay means basic pay payable under 37 U.S.C. 204 and compensation received under 37 U.S.C. 206.

Bonus contributions means contributions made by participants from a bonus as defined in 37 U.S.C. chapter 5.

Civilian account means the TSP account to which contributions have been made by or on behalf of a civilian employee.

Civilian employee means a TSP participant covered by the Federal Employees' Retirement System, the Civil Service Retirement System, or equivalent retirement plans.

Combat zone compensation means compensation received for active service during a month in which a member of the uniformed services serves in a combat zone.

Combat zone contributions means employee contributions that are made from compensation subject to the Federal income tax exclusion at 26 U.S.C. 112 for combat zone compensation.

Eligible retirement plan means a plan defined at 26 U.S.C. 402(c)(8). Generally, an eligible retirement plan is an individual retirement account (IRA) or an individual retirement annuity (other than an endowment contract); a qualified pension, profit sharing, or stock bonus plan; an annuity plan described in 26 U.S.C. 403(a); an annuity contract described in 26 U.S.C. 403(b); or an eligible deferred compensation plan described in 26 U.S.C. 457(b). The IRA or other eligible retirement plan to which a payment from the TSP can be transferred must be a trust established inside the United States (*i.e.,* the 50 states and the District of Columbia).

Employee contributions means contributions made by participants from basic pay, incentive pay, and special pay (including bonuses).

Employing agency means the organization that employs an individual who is eligible to contribute to the TSP and that has authority to make compensation decisions for that employee.

Federal civilian retirement system means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent Federal civilian retirement system.

Periodic contributions means employee contributions made from recurring incentive pay and special pay (including bonuses) as defined in 37 U.S.C. chapter 5.

Ready Reserve means those members of the uniformed services described at 10 U.S.C. 10142.

Regular contributions means employee contributions made from basic pay.

Separation from service means discharge of a member from active duty or the Ready Reserve or transfer of a member to inactive status or to a retired list pursuant to any provision of title 10, U.S.C. The discharge or transfer may not be followed, before the end of the 31-day period beginning on the day following the effective date of the discharge, by resumption of active duty, an appointment to a civilian position covered by the Federal Employees' Retirement System, the Civil Service Retirement System, or an equivalent retirement system, or continued service in or affiliation with the Ready Reserve. Reserve component members serving on full-time active duty who terminate their active duty status and subsequently participate in the drilling reserve are said to continue in the Ready Reserve. Active component members who are released from active duty and subsequently participate in the drilling reserve are said to affiliate with the Ready Reserve.

Service member means a member of the uniformed services on active duty or a member of the Ready Reserve in any pay status.

Service member account means the account to which contributions have been made by or on behalf of a member of the uniformed services.

Special and incentive pay means pay payable as special or incentive pay under 37 U.S.C. chapter 5.

TSP record keeper means the entity that is engaged by the Board to perform record keeping services for the Thrift Savings Plan. The TSP record keeper is the National Finance Center, United States Department of Agriculture, located in New Orleans, Louisiana.

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration.

§ 1604.3 Contribution elections.

A service member may make contribution elections as described in 5 CFR part 1600, with the following exceptions:

(a) *Initial uniformed services open season.* A service member may make a contribution election during an initial uniformed services TSP open season beginning October 9, 2001, and ending January 31, 2002. Contributions based on an election made on or before December 31, 2001, will be deducted from pay the first full pay period of January 2002; elections made in January 2002 will be effective during the first full pay period after the election is received.

(b) *New service members.* An individual who is appointed as a service member may make a TSP contribution election within 60 days after the effective date of the appointment; contributions based on such an election will be made during the first full pay period after the election is received.

(c) *Conversion between active duty and Ready Reserve status.* A service member who converts from Ready Reserve status to active duty status (for more than 30 days), or who converts from active duty to Ready Reserve status, may make a TSP contribution election within 60 days after the effective date of the conversion; contributions based on such an election will be made during the first full pay period after it is received.

(d) *TSP open season elections.* In addition to being able to make a contribution election during the periods described in paragraphs (a) through (c) of this section, as applicable, a service member may make a contribution election during any TSP open season thereafter (as described at 5 CFR part 1600, subpart B).

(e) *Source of contributions.* A service member may elect to contribute sums to the TSP from basic pay, incentive pay, and special pay (including bonuses). However, the service member must be contributing to the TSP from basic pay in order to contribute to the TSP from incentive pay and special pay (including bonuses). Except for an election to contribute from bonuses, all contribution elections must be made during one of the periods described in paragraphs (a) through (d) of this section. A service member may elect to contribute from special pay or incentive pay (including bonuses) in anticipation of receiving such pay (that is, he or she does not have to be receiving the special pay or incentive pay when the contribution election is made); those elections will take effect when the service member receives the special or incentive pay.

§ 1604.4 Contributions.

(a) *Employee contributions.* Subject to the regulations at 5 CFR part 1600 and the following limitations, a service member may make regular contributions to the TSP from basic pay. If the service member makes regular contributions, he or she also may contribute all or a portion of incentive pay and special pay (including bonuses) to the TSP:

(1) *Temporary percentage limitations.* Subject to paragraph (a)(2) of this section, the maximum service member TSP regular employee contribution (including combat zone contributions) for 2002 is 7 percent of basic pay per pay period. The maximum contribution will increase one percentage point each year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraph (a)(2) of this section.

(2) *Internal Revenue Code limitations.* The dollar amount of TSP employee contributions is limited by two different provisions of the Internal Revenue Code (I.R.C.). If a service member's employee contributions exceed either of these limitations, the service member may request a refund of employee contributions (and associated earnings) from the TSP on the form titled ''Request for Return of Excess Employee Contributions to Participant,'' which can be obtained from the TSP record keeper. The completed form must be returned to the TSP record keeper by February 20 of the year after the excess contributions were made.

(i) *Limit on elective deferrals.* Section 402(g) of the I.R.C. (26 U.S.C. 402(g)) places a dollar limit on the amount a person may save on a tax-deferred basis through retirement savings plans. (For 2002, the limit is $11,000. The limit will increase each year by $1,000 until it reaches $15,000 in 2006; thereafter, it will be periodically adjusted by the Internal Revenue Service (IRS).) The TSP will not accept any employee contributions that exceed the I.R.C. section 402(g) limit. If a service member contributes to a civilian TSP account or to another qualified employer plan described at I.R.C. sections 401(k), 403(b), or 408(k) (26 U.S.C. 401(k), 403(b), or 408(k)), and the total employee contributions from taxable income made to all plans exceed the I.R.C. section 402(g) limit, he or she may request a refund of employee contributions from the TSP to conform with the limit. (Combat zone contributions are not taken into consideration when determining the application of the I.R.C. section 402(g) limit.)

(ii) *Limit on contributions to qualified plans.* Section 415(c) of the I.R.C. (26 U.S.C. 415(c)) also places an annual limit on the combined amount that can be contributed to the TSP and to other Federal civilian retirement systems (as defined in § 1604.2). (The limit is periodically adjusted by the IRS; it is the lesser of 100 percent of compensation or $40,000 in 2002.) For purposes of applying this limit, compensation includes combat zone compensation. In implementation of this law, no employee contribution may be made to the TSP for any year to the extent that the sum of the employee's contributions to the TSP and to a Federal civilian retirement system, when added to the employer's contributions to the TSP for that year, would exceed the I.R.C. section 415(c) limit. (If a service member contributes to a civilian TSP account and to a service member TSP account in a single calendar year, the annual limit on contributions will be derived from the participant's combined service member and civilian compensation.) Combat zone contributions are taken into consideration when determining the application of the I.R.C. section 415(c) limit.

(b) *Matching contributions.* When matching contributions are authorized for a service member, that service member's regular contributions will be matched dollar-for-dollar on the first three percent of basic pay contributed to the TSP, and 50 cents on the dollar on the next two percent of basic pay contributed. Matching contributions only apply to regular contributions. Matching contributions are not taken into consideration when determining the application of the contribution limit found at I.R.C. section 402(g)(described in paragraph (a)(2)(i) of this section), but they are taken into consideration when determining the application of the contribution limit found at I.R.C. section 415 (described in paragraph (a)(2)(ii) of this section).

(c) *Deduction and transmittal of contributions.* A service member's employing agency will deduct regular contributions from the service member's basic pay each pay period based on his or her contribution election and will transmit the contributions to the TSP. If a service member also elects to make periodic contributions to the TSP, the employing agency must deduct (and transmit to the TSP) these contributions from the service member's incentive pay or special pay (including bonuses), as applicable.

§ 1604.5 Separate service member and civilian accounts.

(a) *Separate accounts.* Service member accounts are maintained separately from civilian accounts. Therefore, service members making both civilian and uniformed services TSP contributions will have two TSP accounts. For those participants, the accounts are treated separately except in the following circumstances:

(1) If a participant contributes to a service member account and a civilian account, the contributions to both accounts together cannot exceed the Internal Revenue Code contribution limits described in § 1604.4(a)(2).

(2) A member of the uniformed services may obtain a loan from his or her account, as described at § 1604.10, and the loan will be disbursed from the uniformed services account. If the TSP maintains a service member account and a civilian account for an individual, the TSP will calculate the Internal Revenue Code maximum loan amount using both account balances, as described in § 1604.10(a)(3).

(b) *Transfers between TSP accounts.* Service member and civilian TSP account balances may be combined through a transfer (thus producing one account), and the transferred funds will be treated as employee contributions and otherwise invested as described at 5 CFR part 1600. Transfers under this section are subject to the following rules:

(1) An account balance can be transferred once the TSP is informed (by the participant's employing agency) that the participant has separated from either civilian or uniformed services employment.

(2) Combat zone contributions may not be transferred from a uniformed services TSP account to a civilian TSP account.

(3) Transferred funds will be allocated among the TSP's investment funds according to the contribution allocation in effect for the gaining account.

(4) A service member must obtain the consent of his or her spouse before transferring a uniformed services TSP account balance into a civilian account that is subject to Civil Service Retirement System spousal rights. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(5) Before the transfer can be accomplished, any outstanding loans from the account to be transferred must be closed as described in 5 CFR part 1655.

§ 1604.6 Error correction.

(a) *General rule.* A service member's employing agency must correct the service member's account if, as the result of employing agency error, a service member does not receive the TSP contributions to which he or she is entitled. Except as provided in paragraph (b) of this section, those corrections must be made in accordance with 5 CFR part 1605.

(b) *Missed bonus contributions.* This paragraph (b) applies when an employing agency fails to implement a contribution election that was properly submitted by a service member requesting that a TSP contribution be deducted from bonus pay. Within 30 days of receiving the employing agency's acknowledgment of the error, a service member may establish a schedule of makeup contributions with his or her employing agency to replace the missed contribution through future payroll deductions. These makeup contributions can be made in addition to any TSP contributions that the service member is otherwise entitled to make.

(1) The schedule of makeup contributions may not exceed four times the number of months it would take for the service member to earn basic pay equal to the dollar amount of the missed contribution. For example, a service member who earns $29,000 yearly in basic pay and who missed a $2,500 bonus contribution to the TSP can establish a schedule of makeup contributions with a maximum duration of 8 months. This is because it takes the service member 2 months to earn $2,500 in basic pay (at $2,416.67 per month).

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions. The ceiling may not, however, be less than twice the number of months it would take for the service member to earn basic pay equal to the dollar amount of the missed contribution.

§ 1604.7 Withdrawals.

A service member may withdraw all or a portion of his or her account under the rules in 5 CFR part 1650, with the following exceptions:

(a) *Separate accounts.* If the TSP maintains a service member account and a civilian account for an individual, a separate withdrawal request must be made for each account.

(b) *Spousal rights.* The spouse of a service member participant has the same TSP spousal rights as the spouse of a civilian participant covered under the Federal Employees' Retirement System; those spousal rights in the context of a withdrawal (and the process by which a service member may obtain an exception to them) are explained at 5 CFR part 1650.

(c) *Combat zone contributions.* If a service member account contains combat zone contributions, the withdrawal will be distributed *pro rata* from all sources. If a participant requests the TSP to transfer all, or a portion, of a withdrawal to an Individual Retirement Account (IRA) or other eligible retirement plan, the share of the withdrawal attributable to combat zone contributions (if any) can be transferred only if the IRA or retirement plan accepts such funds.

(d) *Separation.* The definition of separation from service at § 1604.2 applies when determining a service member's eligibility for a withdrawal.

§ 1604.8 Death benefits.

The account balance of a deceased service member will be paid as described at 5 CFR part 1651, with the following exceptions:

(a) *Separate accounts.* To designate a beneficiary for a TSP death benefit, a service member must file a valid beneficiary designation form. If the TSP maintains a service member account and a civilian account for an individual, a separate beneficiary designation form must be filed for each account.

(b) *Combat zone contributions.* If a service member account contains combat zone contributions, the death benefit payment will be made *pro rata* from all sources.

(c) *Trustee-to-trustee transfers.* The surviving spouse of a TSP participant can request the TSP to transfer a death benefit payment to an Individual Retirement Account (IRA) or other eligible retirement plan. The share of the death benefit payment that is attributable to combat zone contributions (if any) can be transferred only if the IRA or retirement plan accepts such funds.

(d) *Transfer to a TSP account.* If the TSP maintains an account for a death benefit beneficiary who is the surviving spouse of the participant, the spouse can request the TSP to transfer the death benefit payment to his or her TSP account; the share attributable to combat zone contributions (if any) cannot be transferred into a civilian account.

§ 1604.9 Court orders and legal processes.

A TSP account can be divided in an action for divorce, annulment, or legal separation, and is subject to legal process relating to child support, alimony, or child abuse. The TSP will make a payment from a service member's account under such orders or processes as described at 5 CFR part 1653, with the following exceptions:

(a) *Separate accounts.* To qualify for enforcement against the TSP, a court order or legal process must expressly relate to the TSP. Therefore, if the TSP maintains a service member account and a civilian account for an individual, a qualifying court order or legal process must expressly state from which account payment is to be made.

(b) *Combat zone contributions.* If a service member account contains combat zone contributions, the payment will be made *pro rata* from all sources, unless the court order or legal process directs otherwise.

(c) *Trustee-to-trustee transfers.* The current or former spouse of a TSP participant can request the TSP to transfer a court-ordered payment to an Individual Retirement Account (IRA) or other eligible retirement plan. If the payee requests the TSP to transfer all or a portion of the court-ordered payment to an IRA or other eligible retirement plan, the share of the payment attributable to combat zone contributions (if any) can be transferred only if the IRA or plan accepts such funds.

(d) *Transfer to a TSP account.* If the TSP maintains an account for a court order payee who is the current or former spouse of the participant, the payee can request the TSP to transfer the court-ordered payment to the payee's TSP account; the *pro rata* share attributable to combat zone contributions (if any) cannot be transferred.

§ 1604.10 Loans.

A service member may be eligible for a TSP loan as described at 5 CFR part 1655, with the following exceptions:

(a) *Separate accounts.* If the TSP maintains a service member account and a civilian account for an individual:

(1) A separate loan application must be made for each account;

(2) A participant may have no more than two loans outstanding from each account at any time; one loan from each account may be a loan for the purchase of a primary residence;

(3) The Internal Revenue Code maximum loan amount test, which is described in 5 CFR part 1655, will be applied using the combined balances in both TSP accounts; and

(4) Separate TSP loan statements will be issued for each account.

(b) *Spousal rights.* Before a loan agreement is approved for a service member account, the participant's spouse must consent to the loan by signing the loan agreement. A request for an exception to the spousal consent

requirement will be evaluated under the rules explained in 5 CFR part 1650.

(c) *Combat zone contributions.* The portion of a loan that is attributable to combat zone contributions (if any) will be determined when the loan is declared a taxable distribution, and that portion will not be reported as taxable income to the participant as a result of the declaration.

[FR Doc. 01–24776 Filed 10–3–01; 8:45 am]

BILLING CODE 6760–01–P

Federal Register

Thursday,
October 4, 2001

Part III

Commodity Futures Trading Commission

Securities and Exchange Commission

17 CFR Part 41

17 CFR Part 242

Customer Margin Rules Relating to Security Futures; Proposed Rules

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB71

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–44853; File No. S7–16–01]

RIN 3235–A122

Customer Margin Rules Relating to Security Futures

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (collectively, ''Commissions'') are proposing rules that would establish margin requirements for security futures. The proposed rules would preserve the financial integrity of markets trading security futures, prevent systemic risk, and require that the margin requirements for security futures be consistent with the margin requirements for comparable exchange traded option contracts.

DATES: Comments must be received on or before November 5, 2001.

ADDRESSES: Comments should be sent to both agencies at the addresses listed below.

CFTC: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, Attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to secretary@cftc.gov. Reference should be made to ''Customer Margin for Security Futures.'' All comment letters will be posted, as submitted, on the CFTC's Internet web site (http://www.cftc.gov).

SEC: Persons wishing to submit written comments should send three copies to 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 comment letters should refer to File No. S7–16–01; this file number should be included on the subject line if e-mail is used. Comment letters received will be available for public inspection and copying in the SEC's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the SEC's Internet web site (*http://www.sec.gov*). The SEC does not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

CFTC: Phyllis P. Dietz, Special Counsel; or Michael A. Piracci, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5000. E-mail: (PDietz@cftc.gov); or (MPiracci@cftc.gov).

SEC: Hong-anh Tran, Special Counsel, at (202) 942–0088; Jennifer Colihan, Special Counsel, at (202) 942–0735; Bonnie Gauch, Attorney, at (202) 942–0765; and Lisa Jones, Attorney, at (202) 942–0063, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The CFTC is proposing Rules 41.43 through 41.48, 17 CFR 41.43 through 41.48, and the SEC is proposing Rules 400 through 404, 17 CFR 242.400 through 242.404, under authority delegated by the Federal Reserve Board pursuant to the Exchange Act.[1]

I. Introduction
II. Description of the Proposed Rules
A. Applicability of Regulation T
B. Who is Covered by the Proposed Rules
C. Exclusions from Coverage
1. Financial Relations between a Customer and a Creditor under a Portfolio Margining System
2. Financial Relations between a Foreign Branch of a Creditor and a Foreign Person
3. Margin Requirements Imposed by Clearing Agencies
4. Credit Extended, Maintained or Arranged by a Creditor to or for a Member of a National Securities Exchange or a Registered Broker or Dealer
a. Margin Arrangements with an Exempted Borrower
b. Margin Arrangements with a Borrower Otherwise Exempt Pursuant to Section 7 of the Exchange Act
c. Financial Relations Between a Creditor and Member of a National Securities Exchange or Association
D. Customer Margin Levels for Security Futures
1. Definition of Current Market Value
2. Twenty Percent of the Current Market Value
3. Margin Offsets
4. Higher Margin Levels
E. Time Limits for Collection of Margin
F. Forms of Collateral
III. SEC and CFTC Rule Review Processes Relating to Margin Requirements for Security Futures Products
A. CFTC Rule Review Process and Procedures for Notification of Proposed Rule Changes Related to Margin
B. SEC Rule Review Process
IV. Request for Comments
V. Paperwork Reduction Act
A. CFTC
B. SEC
VI. Costs and Benefits of the Proposed Rules
A. CFTC
B. SEC
1. Costs
a. Compliance with Regulation T
b. Levels of Margin
c. Computation of Margin
d. Notification Requirements Regarding Exempted Borrowers
e. Time Limits for Collection of Margin
2. Benefits
a. Benefits to Brokers, Dealers, and Members of National Securities Exchanges
b. Benefits to Customers
c. Regulatory Benefits
C. Request for Comments
VII. Consideration of Burden on Competition, Promotion of Efficiency, and Capital Formation
VIII. Regulatory Flexibility Act Certifications
A. CFTC
B. SEC
IX. Statutory Basis and Text of Proposed Rules

I. Introduction

The Commodity Futures Modernization Act of 2000 (''CFMA''),[2] which became law on December 21, 2000, lifted the ban on single stock and narrow-based stock index futures (''security futures''). In addition, the CFMA established a framework for the joint regulation of these newly-permissible products by the CFTC and the SEC.

To facilitate the issuance of rules governing customer margin for transactions in security futures products, the CFMA added a new subsection (2) to Section 7(c) of the Exchange Act[3] to provide the Federal Reserve Board with authority to prescribe regulations for brokers, dealers, and members of national securities exchanges extending or maintaining credit to or for, or collecting margin from, customers for security futures products.[4] Section 7(c)(2) of the Exchange Act further requires the Federal Reserve Board to prescribe rules establishing initial and

[1] All references to the Exchange Act are to 15 U.S.C. 78a *et seq.*

[2] Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[3] 15 U.S.C. 78g(c)(2).

[4] *See* 15 U.S.C. 78g(c)(2)(A).

maintenance customer margin requirements imposed by brokers, dealers, and members of national securities exchanges for security futures products.[5] Alternatively, the Exchange Act provides that the Federal Reserve Board may delegate this rulemaking authority jointly to the Commissions.[6] The Federal Reserve Board so delegated its authority by letter dated March 6, 2001.[7] Accordingly, the Commissions are proposing initial and maintenance customer margin requirements, including the levels of margin, for security futures.[8]

The rules proposed by the Commissions under Section 7(c)(2) of the Exchange Act must satisfy the following four statutory requirements. First, the rules must preserve the financial integrity of markets trading security futures products. Second, they must prevent systemic risk. Third, the rules must require that: (1) The margin requirements for a security future be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to Section 6(a) of the Exchange Act;[9] and (2) the initial and maintenance margin levels for a security future not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to Section 6(a) of the Exchange Act, other than an option on a security future.[10] Fourth, the rules must ensure that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security futures, are and remain consistent with the requirements established by the Federal Reserve Board under Regulation T.[11]

As jointly proposed by the Commissions, the rules would:

- Establish the minimum initial and maintenance margin levels required for customers carrying a long or short security futures position at 20 percent of the ''current market value'' of such position.[12]
- Permit regulatory authority[13] rules to provide that customers with strategy-based offset positions involving security futures and one or more related securities or futures have minimum initial and maintenance margin levels lower than the aggregate margins for the components of an offset position, provided that such minimum margin levels are consistent with the margin requirements for comparable offset positions involving exchange-traded option contracts.
- Provide that the requirements of Regulation T, other than margin levels, apply to financial relations between a creditor[14] and a customer with respect to security futures.
- Establish the time limits for the collection of initial and maintenance margin from customers; and
- Set forth the acceptable collateral for margining a security future transaction or position.

II. Description of the Proposed Rules

A. Applicability of Regulation T

Section 7(c)(2)(B)(iv) of the Exchange Act requires that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security futures products, are and remain consistent with the requirements established by the Federal Reserve Board pursuant to subparagraphs (A) and (B) of Section 7(c)(1) of the Exchange Act, *i.e.*, Regulation T.[15]

In analyzing how to implement the statutory mandate that margin requirements for security futures products are and remain consistent with Regulation T, the Commissions have discussed two possible approaches. The first approach, which is reflected in the proposed rules, would require that Regulation T apply to financial relations, including margin arrangements, between a creditor and a customer with respect to security futures and any related securities or futures contracts that are used to offset positions in such security futures, to the extent consistent with the proposed rules.[16]

This approach would ensure that existing and future Federal Reserve Board interpretations of Regulation T would apply. This approach is one way to ensure that margin requirements for security futures would remain consistent with Regulation T without further action by the Commissions.

A second approach would be to issue comprehensive ''stand-alone'' margin rules that would parallel Regulation T requirements for securities to the extent that such requirements are relevant to security futures. The stand-alone rules would apply to security futures and any related securities or futures contracts that are used to offset positions in such security futures. The stand-alone rules would not, however, apply to any other securities or futures transactions.

Regulation T establishes and defines the various types of accounts where securities subject to Regulation T may be carried and held. These accounts include the Margin Account,[17] SMA,[18] the Good Faith Account,[19] the Broker-

[5] *See* 15 U.S.C. 78g(c)(2)(B).

[6] *Id.*

[7] *See* Letter from Jennifer J. Johnson, Secretary of the Board, Federal Reserve Board, to Mr. James E. Newsome, Acting Chairman, CFTC, and Ms. Laura S. Unger, Acting Chairman, SEC, March 6, 2001, reprinted as Appendix B to this proposal.

[8] Because Section 6(h)(6) of the Exchange Act provides that options on security futures may not be traded for at least three years after the enactment of the CFMA, the Commissions are not currently proposing margin requirements for options on security futures. 15 U.S.C. 78f(h)(6).

[9] 15 U.S.C. 78f(a).

[10] The proposed rules recognize that security futures can compete with, and be an economic substitute for, equity securities, such as equity options. Specifically, a synthetic futures contract may be created by two option contracts based on the same underlying instrument. To create a synthetic long (short) futures contract, an investor would buy (sell) a call option and sell (buy) a put option on the same underlying security, with the same expiration date and strike price.

[11] 12 CFR 220 *et seq.* Regulation T governs the initial margin requirements imposed by brokers, dealers, and members of national securities exchanges for all securities, other than exempted securities and security futures products. The rules of self-regulatory organizations (''SROs'') govern, among other things, maintenance margin requirements. Regulation T, among other things, establishes the securities that may be purchased on margin, sets the time frames within which initial margin requirements must be met, establishes and defines the types of accounts in which broker-dealers may record securities transactions, including the Margin Account, Cash Account, Special Memorandum Account (''SMA''), the Good Faith Account, and the Broker-Dealer Credit Account, and specifies the maximum loan value (*i.e.*, the maximum amount that may be loaned) of certain non-exempted equity securities, not including security futures products, that may be extended by brokers, dealers or members of national securities exchanges.

[12] The Commissions propose to define ''current market value'' in Proposed CFTC Rule 41.44(a)(2) and Proposed SEC Rule 401(a)(2), discussed *infra* notes 62–67 and accompanying text.

[13] The term ''regulatory authority'' means an SRO that is registered as a national securities exchange under Section 6 of the Exchange Act (15 U.S.C. 78f) or as a securities association under Section 15A of the Exchange Act (15 U.S.C. 78*o*-3). *See* Proposed CFTC Rule 41.44(a)(7) and Proposed SEC Rule 401(a)(7).

[14] The term ''creditor'' is used in this release and in the proposed rules to refer to brokers, dealers, and members of a national securities exchange that would be subject to the margin requirements for security futures. The use of this term and other terms, such as ''borrower,'' is not intended to indicate that there is an extension of credit involved in the margining of security futures. Rather, such terms are proposed to be used as a means to fulfill the statutory requirement that the margin requirements for security futures are and remain consistent with Regulation T. Regulation T uses the term ''creditor'' to refer to brokers, dealers and members of a national securities exchange that are subject to Regulation T requirements for customers' securities positions, including options positions. Margin requirements for short options positions represent a performance bond, as do the margin requirements proposed today for security futures.

[15] *See* 15 U.S.C. 78g(c)(2)(B)(iv).

[16] *See* Proposed CFTC Rule 41.43(b)(1); Proposed SEC Rule 400(b)(1).

[17] 12 CFR 220.4.

[18] 12 CFR 220.5.

[19] 12 CFR 220.6.

Dealer Credit Account,[20] and the Cash Account.[21]

More specifically, Regulation T requires all transactions to be recorded in a Margin Account, unless they are specifically authorized for inclusion in another account.[22] For example, margin in excess of the required margin under Regulation T and certain other items may be journaled as a credit to the SMA[23] where the credit would remain until the customer uses such credit by withdrawing it from the account or by applying the credit in the SMA as margin on a new securities transaction.[24] Certain broker-dealers also may effect or finance certain transactions for their owners, partners, or shareholders, or for other broker-dealers in a broker-dealer credit account.[25] Customers may also trade instruments other than securities, such as futures contracts and foreign currencies, in a Good Faith Account.[26]

Under the proposed rules, security futures transactions would be recorded in a Margin Account because the proposed margin level requirements represent a performance bond to guarantee contract performance by both the buyer and seller of such contract. Any daily net gain (or loss) on a security future (''settlement variation'') would be credited to (or debited from) the Margin Account. Broker-dealers registered with the SEC under Section 15(b)(1) of the Exchange Act[27] may journal any margin excess in the SMA.

The Commissions request comment on the extent to which Regulation T should apply to security futures.

Q 1 The Commissions request commenters' suggestions on alternative ways to satisfy the statutory requirement that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security futures, are and remain consistent with the requirements of Regulation T. In particular, commenters are asked to discuss the advantages and disadvantages of issuing a rule that incorporates Regulation T by reference, as compared to issuing a stand-alone rule that would include requirements of Regulation T insofar as they are relevant to security futures. With respect to the stand-alone alternative, commenters are asked to consider any potential issues arising from the Federal Reserve Board's on-going authority to amend or interpret Regulation T and how such a stand-alone rule would ensure that the margin requirements for security futures held in either a securities account or a futures account would remain, over time, consistent with Regulation T. Commenters are asked to explain the meaning they ascribe to the term ''consistent,'' when discussing means for satisfying the statutory requirement.

Q 2 The existing customer account structure used by futures commission merchants (''FCMs'') offers one type of customer account into which all customer property, including cash and other assets, is deposited. FCMs are not currently subject to Regulation T and, therefore, do not delineate accounts in accordance with Regulation T.

(a) Would the application of Regulation T account requirements to FCMs, to the extent they hold customer positions in security futures, necessitate the restructuring of FCM account systems?

(b) In addition to the Regulation T account structure, what other requirements of Regulation T would necessitate operational or other changes for FCMs that are notice-registered broker-dealers?

(c) What are the estimated costs associated with such changes?

Q 3 Can a futures account be considered a Margin Account under Regulation T? If not, how would an FCM modify its futures accounts to satisfy Regulation T requirements for Margin Accounts?

Q 4 In order to comply with Regulation T, would FCMs need to establish Regulation T accounts other than margin accounts? If so, what would be the costs and operational feasibility of establishing such accounts?

Q 5 What benefits to FCM customers or others can be expected if an FCM converts to the Regulation T account structure?

Q 6 What benefits to FCM customers or others can be derived from application of other provisions of Regulation T?

Q 7 How should the SMA work in the context of security futures?

Q 8 Are there any other requirements under Regulation T that are inappropriate for security futures?

Q 9 Without applying Regulation T account requirements, could the existing rules applicable to futures accounts satisfy the statutory requirement that the margin requirements (other than levels of margin) including the type, form, use of collateral for security futures are and remain consistent with Regulation T?

Q 10 How would broker-dealers, including FCMs that are notice-registered broker-dealers, and members of national securities exchanges structure customer accounts if Regulation T were not incorporated by reference into the margin rules for security futures?

Q 11 (a) If the Commissions were to issue stand-alone rules that were parallel to Regulation T, how would commenters recommend that the Commissions incorporate the Federal Reserve Board's existing and future interpretations of Regulation T into such stand-alone rules?

(b) How would stand-alone rules impact the way securities firms calculate margin requirements for securities other than security futures?

(c) Is there a risk of inconsistent application of the same rules?

(d) What implications would this approach have for compliance with such rules?

Q 12 Should the proposed rules incorporate any special requirements for specific types of transactions or trading activity (*e.g.,* day trading) that may be imposed under the margin rules of the SROs?

B. Who Is Covered by the Proposed Rules

The principal purpose of the proposed rules is to regulate customer margin collected by brokers, dealers, and members of national securities exchanges related to customers' transactions in security futures, including the minimum amount of initial and maintenance margin that must be collected.[28] The proposal would require a broker, dealer, or member of a national securities exchange that effects transactions for a customer involving, or carrying an account for a customer containing, a security future to collect from such customer sufficient collateral to satisfy the margin requirements set forth in Proposed CFTC Rules 41.43 through 41.48, and Proposed SEC Rules 400 through 404.[29]

FCMs are brokers or dealers under the Exchange Act if they effect transactions in securities, including security future

[20] 12 CFR 220.7.

[21] 12 CFR 220.8.

[22] *See* 12 CFR 220.4(a)(1).

[23] The following entries represent credits to the SMA balance: (1) Dividend and interest payments; (2) Regulation T excess (the amount by which a customer's equity exceeds the initial Regulation T requirement); (3) deposits not needed to meet Regulation T margin calls; (4) deposits of securities (other than security futures) that carry loan value in the margin account; and (5) cash made available when a liquidation transaction releases funds for withdrawal from the margin account. *See* 12 CFR 220.5(b)(1)–(4).

[24] 12 CFR 220.5(b).

[25] 12 CFR 220.7.

[26] 12 CFR 220.6(e).

[27] 15 U.S.C. 78*o*(b)(1).

[28] *See* Proposed CFTC Rule 41.43(a); Proposed SEC Rule 400(a).

[29] *See* Proposed CFTC Rule 41.54(a); Proposed SEC Rule 402(a).

products, and they would therefore be subject to these proposed rules. Accordingly, such FCMs must register as broker-dealers under Section 15(b) of the Exchange Act.[30] The CFMA added Section 15(b)(11) to the Exchange Act,[31] which permits FCMs to register as broker-dealers by filing a written notice with the SEC for the limited purpose of trading security futures products, if certain conditions are met.[32] In addition, although certain natural persons that are members of designated contract markets registered under Section 6(g) of the Exchange Act[33] are exempt from the broker-dealer registration requirements, those persons are members of a national securities exchange and, as such, would be subject to the proposed rules.[34]

The rules would explicitly exclude certain categories of financial relations.[35] The proposed exclusions are described below.

C. Exclusions From Coverage

1. Financial Relations Between a Customer and a Creditor under a Portfolio Margining System

Section 7(c)(2)(B)(iii) of the Exchange Act[36] provides that the margin requirements for security futures must be consistent with the margin requirements for comparable exchange-traded options, and the initial and maintenance margin levels for a security future may not be lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option. Accordingly, risk-sensitive/portfolio-based margining (''portfolio margining'') for security futures would be permissible to the extent it would be permissible for comparable exchange-traded options.

Regulation T by its terms does not apply to financial relations between a customer and a creditor to the extent that they ''comply with a portfolio margining system under rules approved or amended by the SEC.''[37] Moreover, Regulation T provides that the required margin for exchange-traded options shall be the amount or other position specified by the rules of the registered national securities exchange or registered national securities association authorized to trade the option, that have been approved, or amended, by the SEC.[38] Accordingly, if a portfolio margining system were developed by a registered national securities exchange or registered securities association, and approved by the SEC for exchange-traded options, a comparable portfolio margining system could be developed for security futures products.

The proposed rules[39] similarly do not apply to financial relations between a customer and a creditor to the extent that they comply with a portfolio margining system under rules that have become effective in accordance with Section 19(b)(2) of the Exchange Act and, as applicable, Section 5c(c) of the CEA.[40]

Portfolio margining sets levels of margin by assessing the actual net market risk of specific market positions in specific securities or commodities. Under a portfolio margining system, the amount of required margin is determined by analyzing the risk of each component position in a customer account (*e.g.,* a class of option with the same expiration date) and by recognizing any risk offsets in an overall portfolio of positions (*e.g.,* across contracts on the same underlying instrument). So that adequate margin is deposited to cover extraordinary market events, one or more additional multipliers or other adjustments may be applied in calculating a customer's required margin. Depending upon the risks attributable to one or more positions, the amount of required margin may be greater than or less than the margin levels currently required for securities positions in a fixed-percentage strategy-based margining system.

The SEC and the CFTC have already approved exchange rules regarding a number of different portfolio margining systems for various purposes. The CFTC has approved portfolio margining using the Standard Portfolio Analysis of Risk (''SPAN'') system for all currently traded futures contracts, at both the clearing level and customer level.[41] In 1986, the SEC first approved The Options Clearing Corporation (''The OCC'') portfolio margining system, the Theoretical Intermarket Margin System (''TIMS''), for margin collected by The OCC for the non-equity option positions of The OCC clearing members.[42] In 1991, the SEC approved The OCC's use of TIMS for equity options.[43] Moreover, the SEC and CFTC have approved exchange rules that permit portfolio margining for options market makers in the context of limited cross-margining programs involving futures and options on broad-based stock indexes.[44]

Currently, the Chicago Board Options Exchange (''CBOE'') is working in cooperation with The OCC, the New York Stock Exchange (''NYSE''), the American Stock Exchange (''AMEX''), the Chicago Board of Trade (''CBOT''), and the CME to develop a pilot program that would provide an alternative method of margining (*i.e.,* a portfolio margining system) for certain customers[45] in broad-based stock index

[30] 15 U.S.C. 78*o*(b).

[31] 15 U.s.C. 78*o*(b)(11).

[32] *See* Securities Exchange Act Release No. 44730 (August 21, 2001), 66 FR 45138 (August 27, 2001) (SEC Release adopting amendments to its broker-dealer registration requirements for notice-registered broker-dealers and adopting Form BD–N).

[33] 15 U.S.C. 78f(g).

[34] *See* Proposed CFTC Rule 41.45; Proposed SEC Rule 402(a).

[35] *See* Proposed CFTC Rule 41.43(b)(3); Proposed SEC rule 400(b)(3). The Commissions note that there may be some factual circumstances that will satisfy the criteria of more than one exclusion.

[36] 15 U.S.C. 78g(c)(2)(B)(iii).

[37] 12 CFR 220.1(b)(3)(i).

[38] 12 CFR 220.12(f)(1).

[39] *See* Proposed CFTC Rule 41.43(b)(3)(i); Proposed SEC rule 400(b)(3)(i).

[40] 15 U.S.C. 78s(b)(2); 7 U.S.C. 7a–2(c). Pursuant to Sections 19(b)(1) and 6(g)(4)(B)(ii) of the Exchange Act (15 U.S.C. 78s(b)(1) and 15 U.S.C. 78f(g)(4)(B)(ii), respectively), rules implementing portfolio margining for security futures must be submitted to the SEC for approval in accordance with Section 19(b)(2) of the Exchange Act. Designated contract markets registered under Section 5 of the CEA and registered derivatives transaction execution facilities (''DTFs'') also must seek prior approval from the CFTC or provide notice by written certification to the CFTC, pursuant to Section 5c(c) of the CEA (7 U.S.C. 7a–2(c)). *See infra* notes 110–140 and accompanying text.

[41] The CFTC also has approved SPAN margining for all options on futures contracts. Developed in 1988, the SPAN margining system currently is used on more than 30 exchanges and clearing organizations worldwide, including the London International Financial Futures Exchange, which trades single stock futures contracts.

[42] *See* Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127 (April 30, 1986).

[43] *See* Securities Exchange Act Release No. 28928 (March 1, 1991), 56 FR 9995 (March 8, 1991).

[44] To date, the Commissions have approved cross-margining programs between The OCC and the following futures clearing organizations: The Intermarket Clearing Corporation (1988); Chicago Mercantile Exchange (''CME'') (1989); Board of Trade Clearing Corporation (''BTCC'') (1991); Kansas City Board of Trade Clearing Corporation (1992); and Comex Clearing Association (1992). The Commissions also have approved cross-margining programs between the Government Securities Clearing Corporation and the following futures clearing organizations: the New York Clearing Corporation (1999); BTCC (2001); and CME (2001). For further discussion of cross-margining programs, *see* ''Eighth Annual Report to the Board of Governors of the Federal Reserve System on the Review of Stock Index Futures and Option Margining Systems by the Commodity Futures Trading Commission'' (June 2001), note 7 and accompanying text (available from the CFTC Office of the Secretariat).

[45] The pilot program currently being developed by the CBOE, The OCC, the NYSE, AMEX, CBOT and CME is contemplated to be available for (1) any registered broker or dealer registered with the SEC pursuant to Section 15(b)(1) of the Exchange Act; (2) any affiliate of a self-clearing Exchange Act Section 15(b)(1) registered broker-dealer; (3) any registered futures floor trader to the extent that listed index options positions hedge the trader's index futures and options positions; and (4) any person or entity that has or, establishes and maintains equity of at least five million dollars across all securities and futures accounts under his/her/its common ownership.

options and futures positions. The staffs of the Commissions are working with the participating regulatory authorities and their members to identify the regulatory and operational issues that need to be resolved to ensure successful implementation by the regulatory authorities of a portfolio margining system for securities futures products.[46] Among other issues, the Commissions would have to be satisfied that the portfolio margining system used to calculate customer margin requirements appropriately takes into account the trading characteristics and historical market performance of the applicable securities products, as well as the observed correlations among those products to the extent that offsets across various products are permitted. The Commissions would also need to be confident that the system provides a sufficient cushion of margin or capital against extraordinary price movements.

The Commissions strongly encourage the efforts of market participants to develop a portfolio margining proposal for security futures, and are committed to working with these participants to resolve any outstanding issues, as quickly as feasible. Such a portfolio margining system would also be responsive to the Federal Reserve Board's desire to encourage the development of more risk-sensitive, portfolio-based approaches to margining security futures products.[47]

Q 13 Should there be any restrictions on a firm's eligibility to offer a portfolio margining system to its customers? If so, what types of restrictions are appropriate?

Q 14 Should there be any restrictions on a customer's eligibility to use portfolio margining? If so, what types of restrictions are appropriate?

Q 15 (a) Should a firm be permitted to elect to use either SPAN or TIMS to calculate security futures margin requirements?

(b) Would the use of SPAN and TIMS result in significantly different margin requirements for the same account?

(c) Are there other portfolio margining systems that the Commissions should consider?

Q 16 What costs would be incurred in order for firms to set up and operate a portfolio margining system? How would the costs of using a portfolio margining system differ from the costs of using the proposed strategy-based approach?

2. Financial Relations Between a Foreign Branch of a Creditor and a Foreign Person

Financial relations between a foreign branch of a creditor and a foreign person involving foreign securities are excluded from the scope of Regulation T.[48] Similarly, Proposed CFTC Rule 41.43(b)(3)(ii) and Proposed SEC Rule 400(b)(3)(ii) specify that the proposed rules would not apply to financial relations between a foreign branch of a creditor and a foreign person involving foreign security futures.[49] This exclusion is designed so that financial relations between a foreign branch of a creditor and a foreign person involving foreign securities would be treated in a manner consistent with the way Regulation T treats such financial relations.

3. Margin Requirements Imposed by Clearing Agencies

Section 7(c)(2) of the Exchange Act gives the Federal Reserve Board the authority to prescribe regulations regarding the extension or maintenance of credit to or for, or the collection of margin from, any customer on any security futures product,[50] but it does not confer authority over margin requirements for clearing agencies. For this reason, in its delegation letter, the Federal Reserve Board stated that ''[t]he authority delegated by the Board is limited to customer margin requirements imposed by brokers, dealers, and members of national securities exchanges. It does not cover margin requirements imposed by clearing agencies on their members.'' [51] The margin rules of clearing agencies are approved by the SEC pursuant to Section 19(b)(2) of the Exchange Act.[52] The CFTC has authority to ensure compliance with core principles for clearing organizations under Sections 5b and 5c of the CEA.[53]

Proposed CFTC Rule 41.43(b)(3)(iii) and Proposed SEC Rule 400(b)(3)(iii) would exclude from the proposed rules margin requirements that clearing agencies registered with the SEC or the CFTC impose on their members. The purpose of the proposed rules would be to clarify that these margin rules would not apply to clearing agencies registered with either the SEC or the CFTC.

4. Credit Extended, Maintained or Arranged by a Creditor to or for a Member of a National Securities Exchange or a Registered Broker or Dealer

a. Margin Arrangements With an Exempted Borrower

Proposed CFTC Rule 41.43(b)(3)(iv)(A) and Proposed SEC Rule 400(b)(3)(iv)(A) would exclude from the proposed rules' requirements margin arrangements between a creditor and a borrower with respect to the borrower's financing of proprietary positions in security futures, based on the creditor's good faith determination that the borrower is an ''exempted borrower.'' Regulation T defines an ''exempted borrower'' as a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who: (1) Maintains at least 1,000 active accounts on an annual basis for persons other than brokers, dealers, and persons associated with a broker or dealer; (2) earns at least $10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer; or (3) earns at least 10 percent of its gross revenues on

[46] This pilot program would likely take a two-prong approach: (1) It would adopt a portfolio margining system that sets margin requirements for portfolios in a securities account consisting of positions in products based on U.S. domestic broad-based market indexes, including securities index options, securities index warrants, and marginable index Unit Investment Trusts (''UITs'') based on the greatest projected net loss of all positions in a ''class group'' or ''product group'' as determined by an options pricing model covering a specified range of market moves; and (2) it would adopt a cross-margining system that would apply a portfolio margining system to portfolios consisting of positions in products based on U.S. domestic broad-based market indexes, including securities index options and warrants, UITs, and index futures and options on index futures. The two prongs of the pilot are severable, and only the approval of the first prong—a portfolio margining system—is a precondition for using portfolio margining, rather than strategy-based margining, for security futures.

Before approving the cross-margining system, the Commissions would need to ensure that any such accounts are adequately protected against insolvency risks; in particular, relief from applicable securities and commodities customer protection regimes is necessary to facilitate cross-margining.

[47] In its delegation letter, the Federal Reserve Board requested that ''the Commissions provide an assessment of progress toward adopting more risk-sensitive, portfolio-based approaches to margining security futures products.'' It further stated that ''The Board has encouraged the development of such approaches by, for example, amending its Regulation T so that portfolio margining systems approved by the [SEC] can be used in lieu of the strategy-based system embodied in the Board's regulation. The Board anticipates that the creation of security future products will provide another opportunity to develop more risk-sensitive, portfolio based approaches for all securities, including security options and security futures products.'' *See* Appendix B.

[48] 12 CFR 220.1(b)(3)(iv).

[49] Regulation T defines the term ''foreign person'' to mean a person other than a United States person as defiend in Section 7(f) of the Exchange Act. *See* 12 CFR 220.2.

[50] 15 U.S.C. 78g(c)(2).

[51] *See* Appendix B.

[52] 15 U.S.C. 78s(b)(2).

[53] 7 U.S.C. 7a–1; 7 U.S.C. 7a–2.

an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer.[54]

The Regulation T criteria for an ''exempted borrower'' establish standards for the applicability of Section 7(c)(3)(A) of the Exchange Act, which exempts from federal margin rules ''credit extended, maintained, or arranged by a member of a national securities exchange or a broker or dealer to or for a member of a national securities exchange or a registered broker or dealer * * * a substantial portion of whose business consists of transactions with persons other than brokers or dealers.'' [55]

The Commissions propose under CFTC Rule 41.45(e) and SEC Rule 402(e) that once a person ceases to qualify as an exempted borrower under Regulation T, it would be required to notify the creditor of this fact before establishing any new security future positions. Under such circumstances, any new security future positions established by such person would be subject to the provisions of this proposed regulation.

b. Margin Arrangements With a Borrower Otherwise Exempt Pursuant to Section 7 of the Exchange Act

Under Section 7(c)(3) of the Exchange Act, the financing of the market making or underwriting activities of a member of a national securities exchange or a registered broker or dealer is exempted from the scope of federal margin regulation.[56] The Federal Reserve Board has expressed the view that certain futures floor traders, *i.e.,* those trading in the current open-outcry environment, act as market makers and therefore would be exempt under Section 7(c)(3) of the Exchange Act.[57] For clarity, the Commissions are proposing to specify under Proposed CFTC Rule 41.43(b)(3)(iv)(B) and Proposed SEC Rule 400(b)(3)(iv)(B) that credit extended by a broker, dealer or member of a national securities exchange that is exempt under Section 7(c)(3) of the Exchange Act [58] would also be excluded from the proposed rules.

c. Financial Relations Between a Creditor and a Member of a National Securities Exchange or Association

In addition, because the Commissions expect that certain members of national securities exchanges that use a screen-based trading system also will act as market makers, the Commissions are proposing to exclude from the scope of the proposed rules certain floor traders, floor brokers, and securities dealers who are exchange members and who have market maker obligations. Accordingly, the Commissions propose under CFTC Rule 41.43(b)(3)(iv)(C) and SEC Rule 400(b)(3)(iv)(C) to exclude from the scope of these proposed rules credit extended by a creditor to a member of a national securities exchange or a national securities association registered pursuant to Section 15A(a) of the Exchange Act [59] that does not directly or indirectly accept or solicit orders from any customer or provide advice to any customer in connection with the trading of securities futures and that is registered with such exchange or association as a security futures dealer, pursuant to regulatory authority rules approved by the SEC pursuant to Section 19(b)(2) of the Exchange Act.[60] To take advantage of this exemption these regulatory authority rules would have to require such member: (1) To be registered as a floor trader or floor broker with the CFTC, or as a dealer with the SEC; (2) to comply with applicable SEC or CFTC net capital requirements; (3) to maintain records sufficient to demonstrate compliance with this proposed exclusion and the rules of the exchange or association; and (4) to hold itself out as willing to buy and sell security futures for its own account on a regular or continuous basis.[61] Finally, the regulatory authority's rules would have to provide for disciplinary action against a member for its failure to comply with the Commissions' margin rules or the rules of the exchange or association.

Q 17 (a) Do the criteria set forth in proposed CFTC Rule 41.43(b)(3)(iv)(C)(*2*) and proposed SEC Rule 400(b)(3)(iv)(C)(*2*) encompass all of the persons that would perform a market maker function in an electronic market?

(b) Is this provision equitable to both securities exchanges and futures exchanges trading security futures?

D. Customer Margin Levels for Security Futures

This section describes how the Commissions propose that brokers, dealers, and national securities exchange members calculate the customer margin levels for security futures. Specifically, the Commissions propose to require both the seller and the buyer of a security future to provide and maintain, on a daily basis, cash or other acceptable assets equal to a percentage of the ''current market value'' of the security future.

1. Definition of Current Market Value

Currently, the initial and maintenance margin requirements for the sale of an at-the-money, uncovered put or call option are 100 percent of the option premium,[62] plus a fixed percentage of the value of the underlying financial instrument. The reference price used in determining the value of the underlying financial instrument when calculating the initial margin required on the sale of an uncovered option differs from the reference price used in calculating its maintenance margin. Specifically, to determine the initial margin required on the sale of an uncovered put or call option, the price used to determine the value of the underlying stock is the price at which the stock closed on the business day preceding the day on which the option is sold.[63] To determine the maintenance margin required at the end of a particular trading day for an uncovered, short put or call option, the price used is the price at which the underlying stock closed at the end of such trading day.[64]

The CFMA requires that the margin requirements for security futures be consistent with the margin requirements for comparable options contracts. For this reason, the Commissions are proposing to use a reference price for determining security futures margin consistent with the reference price used for determining margin on uncovered short options positions. Specifically, the Commissions are proposing to require that the daily settlement price of a security future be used to calculate both the initial and maintenance margin

[54] 12 CFR 220.2.

[55] *See* 15 U.S.C. 78g(c)(3)(A); *see also* 12 CFR 220.2.

[56] *See* 15 U.S.C. 78g(c)(3).

[57] In its March 6, 2001 letter, the Federal Reserve Board stated that ''[i]n the current open-outcry environment, the Board believes that floor traders act as market makers and therefore would be exempt [under Section 7(c)(3) of the Exchange Act].'' *See* Appendix B.

[58] 15 U.S.C. 78g(c)(3).

[59] 15 U.S.C. 78*o*–3(a).

[60] 15 U.S.C. 78s(b)(2).

[61] This provision incorporates the definition of ''market maker'' found in Section 3(a)(38) of the Exchange Act (15 U.S.C. 78c(a)(38)), which provides that a market maker is ''any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.''

[62] The option premium is the net sales proceeds of the option on the day the option is sold. *See* Amex Rule 462; CBOE Rule 12.3; and NYSE Rule 431.

[63] *Id.*

[64] *Id.*

requirements for such security future.[65] The Commissions believe that, for purposes of calculating margin requirements for a security future, using the daily settlement price for such future as the reference price is consistent with the use of the closing price of the underlying security used as the reference price for determining margin for equity options. For these reasons, the Commissions are proposing to use the daily settlement price of a security future as the reference price for calculating margin for such security future.

In addition, the Commissions believe that using the daily settlement price of a security future on the day of a transaction—rather than the daily settlement price on the day preceding the transaction—to calculate the initial margin is consistent with using the underlying stock's closing price on the preceding business day. The daily settlement price of a security future on the preceding business day, for example, may not exist if such security future were not available for trading on the preceding business day.

Finally, the Commissions propose to define ''current market value'' of a future on a single security, on any trading day, to be the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable number of shares per contract.[66] The Commissions propose to define ''current market value'' of a narrow-based security index future to be the product of the daily settlement price of such security future, as shown by any regularly published reporting or quotation service, and the applicable contract multiplier.[67] Q 18 Is the proposed method for calculating current market value of a security future appropriate? If not, commenters are requested to suggest alternatives.

2. Twenty Percent of the Current Market Value

The Commissions propose that the minimum initial and maintenance margin levels required of customers for each security future carried in a long or short position be 20 percent of the current market value of such security future.[68] Under Section 7(c)(2) of the Exchange Act, the initial and maintenance margin levels for a security future must not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contracts traded on any exchange registered pursuant to Section 6(a) of the Exchange Act.[69]

Currently, all listed options have the same margin requirements. For long, listed option contracts the purchaser is generally required to pay the full amount of such contract. The required initial and maintenance margin for short, at-the-money listed option contracts, where the underlying instrument is either an equity security (such as a stock or an instrument immediately convertible into a stock), or a narrow-based index, are 100 percent of the option proceeds plus 20 percent of the underlying security or index value.[70]

Unlike an options contract, however, a futures contract involves obligations of both parties to perform in the future—the buyer (long) to purchase the asset underlying the future and the seller (short) to deliver the asset. Thus, both the buyer and the seller of a futures contract must initially post and maintain, on a daily basis, margin to assure contract performance and the integrity of the marketplace. In addition, all market participants pay or receive daily settlement variation payments as a result of all open futures positions being marked to current market value by the clearing organization.

The Commissions propose that the initial and maintenance margin levels required of customers for each security future carried in a long or short position be 20 percent of the current market value of such security future[71] because 20 percent is the uniform margin level required for short, at-the-money equity options traded on U.S. options exchanges. Any national securities exchange or national securities association may, of course, impose higher margin level requirements on its members, and any broker, dealer, or member of a national securities exchange may impose higher margin level requirements on its customers.[72]

As noted elsewhere in this notice, the Federal Reserve Board has expressed the view that ''more risk-sensitive, portfolio-based approaches to margining security futures products'' should be adopted.[73] Pending adoption of such systems by regulatory authorities, however, the 20 percent level is consistent with the current requirements for comparable equity options.

3. Margin Offsets

The Commissions also propose to allow national securities exchanges or national securities associations to have rules that reduce the margin requirements for customers with certain security or futures positions that offset their security futures positions, provided that the resulting margin levels are not lower than the lowest customer margin levels required for comparable offset positions involving option contracts traded on any exchange registered pursuant to Section 6(a) of the Exchange Act.[74]

Currently, regulatory authority rules approved by the SEC permit lower maintenance margin requirements for stock positions that are part of hedging strategies with options positions.[75] The following hedging strategies, for example, currently have lower maintenance margin requirements for the overall combined position than would be the case if each component position in each of the hedging strategies described below were margined separately:

(1) Long put option/long stock;

(2) Long call option/short stock;

(3) Long stock/long put option/short call option (where the put and the call options have the same expiration date and exercise price);

[65] Under Proposed CFTC Rule 41.44(a)(8) and Proposed SEC Rule 401(a)(8), the daily settlement price means, with respect to a security future, the settlement price of such security future determined at the close of trading each day, as determined by the rules of the applicable exchange or clearing organization. This daily settlement price is used for calculating daily margin requirements. For physical delivery contracts, the settlement price on the last trading day may also be used as the invoice price for delivery of the security. For cash settled contracts, the final settlement price of a security future is directly based on the market for the underlying stock or security and may differ from the daily settlement price on the last trading day. *See* Securities Exchange Act Release No. 44743 (August 24, 2001), 66 FR 45904 (August 30, 2001).

[66] *See* Proposed CFTC Rule 41.44(a)(2)(i); Proposed SEC Rule 401(a)(2)(i).

[67] *See* Proposed CFTC Rule 41.44(a)(2)(ii); Proposed SEC Rule 401(a)(2)(ii). Under Proposed CFTC Rule 41.44(a)(1) and Proposed SEC Rule 401(a)(1), the term contract multiplier means the number of units of a narrow-based security index expressed as a dollar amount, in accordance with the terms of the security future.

[68] *See* Proposed CFTC Rule 41.45(b); Proposed SEC Rule 402(b).

[69] 15 U.S.C. 78g(c)(2).

[70] *See, e.g.,* Amex Rule 462; CBOE Rule 12.3; National Association of Securities Dealers (''NASD'') Rule 2520; NYSE Rule 431; PCX Rule 2.16; and Philadelphia Stock Exchange Rule 722.

[71] *See* Proposed CFTC Rule 41.45(b)(1); Proposed SEC Rule 402(b)(1).

[72] *See* Proposed CFTC Rule 45.45(b)(2); Proposed SEC Rule 402(b)(2).

[73] *See* Appendix B.

[74] *See* Proposed CFTC Rule 41.45(d); Proposed SEC Rule 402(d).

[75] *See* Securities Exchange Act Release Nos. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving SR–CBOE–97–67 amending CBOE Rule 12.3); 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (order approving SR–NYSE–99–03 amending NYSE Rule 431); 43582 (November 17, 2000), 65 FR 70854 (November 28, 2000) (order approving SR–Amex–99–27 amending Amex Rule 462); and 43581 (November 17, 2000), 65 FR 71151 (November 29, 2000) (order approving SR–NASD–00–15 amending NASD Rule 2520).

(4) Short stock/short put option/long call option (where the put and the call options have the same expiration date and exercise price); and

(5) Long stock/long put option/short call option (where the put and the call options have the same expiration date, but the exercise price of the long put option is lower than the exercise price of the short call option).[76]

Because, however, the initial margin for equity securities is governed by Regulation T, the initial margin on the stock components of hedging strategies remains the same as initial margin for stock that is not part of a hedging strategy.[77] Thus, to initially purchase any one of these combined stock/option(s) positions on margin, a customer must satisfy the margin requirements individually for each of the securities that compose the hedging strategy. For example, when entering into a combined long call option position and a short position in the stock underlying the call option, a customer must pay for the call option in full[78] and satisfy the initial margin requirement for the short stock position, which is the greater of: (1) The amount specified in Regulation T; (2) the maintenance margin requirement under SRO rules for a short stock;[79] (3) such greater amount as the SRO may from time to time require for specific securities; or (4) the minimum equity required to be deposited under the SRO's rules.[80] However, for the customer to maintain the same long call option and short stock position, the customer need only maintain margin in its account equal to the lesser of: (1) 10 percent of the call option exercise price, plus 100 percent of any amount by which the call option is out-of-the-money; and (2) the maintenance margin requirement on the short stock position.[81]

Under this joint proposal, the Commissions propose that customers be permitted to offset positions involving security futures with certain related securities or futures. Such offsets would be available under regulatory authority rules approved by the SEC pursuant to Section 19(b)(2) of the Exchange Act.[82]

When the SEC approved strategy-based offsets for options (that are comparable to the offsets proposed to be permitted for security futures in the chart below), the SEC found that it was appropriate for the SROs to recognize the hedged nature of certain combined options strategies and prescribe margin requirements that better reflect the risk of those strategies.[83–88] Furthermore, the SEC found that the SROs' proposals relating to strategy-based offsets involving options contracts were carefully crafted as they were based on the SROs' experiences in monitoring the credit exposures of options strategies. In particular, the SEC noted that the SROs regularly examine the coverage of options margin as it relates to price movements in the underlying securities and index components. Moreover, the SROs' proposals were thoroughly reviewed by the NYSE Rule 431 Review Committee, which is comprised of securities industry participants who have extensive experience in margin and credit matters. As a result of these factors, the SEC was confident that the SROs' proposed margin requirements were consistent with investor protection and properly reflected the risks of the underlying options positions.

The following table includes strategy-based offsets for security futures that the Commissions have preliminarily identified as consistent with those permitted for comparable offset positions involving options, and that would qualify for reduced margin levels. Although the levels are intended to be consistent with the margin levels for comparable offsets involving options, the Commissions recognize that the margin levels set forth in the table may not fully reflect the reduction in risk associated with the offsets.

	Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
1	Long security future or short security future.	Individual stock or narrow-based security index.	20% current market value of the security future.	20% current market value of the security future.
2	Long security future (or basket of security futures representing each component of a narrow-based securities index[1]) and long put option[2] on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus pay for the long put in full.	The lower of: (1) 10% of the the aggregate exercise price[3] of the plus put plus the aggregate put out-of-the-money[4] amount, if any; or (2) 20% of the current market value of the long security future.
3	Short security future (or basket of security futures representing each component of a narrow-based securities index) and short put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus the aggregate put in-the-aggregate money amount, if any. Proceeds from the put sale may be applied.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any.[5]

[76] *See, e.g.,* NYSE Rule 431(f)(2)(G). In addition to these hedging strategies that affect the maintenance margin requirement for the underlying stock, there are strategies involving covered calls (long the underlying security and a short call option position) and covered puts (short the underlying security and a short put option position) in which there are no initial or maintenance margin requirements for the option component. There are also hedging strategies involving option-to-option offsets with lower initial and maintenance margin requirements.

[77] Regulation T requires that the initial margin for certain equity securities, other than exempted securities and security future products, be 50 percent of the current market value of the security. *See* 12 CFR 220.12(a).

[78] *See, e.g.,* NYSE Rule 431(f)(2)(C).

[79] The maintenance margin for a short stock is calculated as either: (1) $2.50 per share or 100% of the current market value (as defined in Regulation T), whichever amount is greater, of each stock short in the account selling at less than $5.00 per share; or (2) $5.00 per share or 30% of the current market value (as defined in Regulation T), whichever amount is greater, of each stock short in the account selling at $5.00 per share or above. *See, e.g.,* NYSE Rule 431(c).

[80] A customer is required to have equity of at least $2,000, except that cash need not be deposited in excess of the cost of any security purchased. *See, e.g.,* NYSE Rule 431(b).

[81] *See, e.g.,* NYSE Rule 431(f)(2)(G)(v).

[82] 15 U.S.C. 78s(b)(2). Implementation of such rules by designated contract markets registered under Section 5 of the CEA (7 U.S.C. 7) and registered DTFs also would be subject to the notice requirements of Section 5c of the CEA (7 U.S.C. 7a–2). *See infra* notes 110–121 and accompanying text.

[83–88] *See supra* note 75.

	Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
4	Long security future and short position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the short stock or stocks.	10% of the current market value as defined in Regulation T of the stock or stocks underlying the security future.
5	Long security future (or basket of security futures representing each component of a narrow-based securities index) and Short call option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregrate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.
6	Long a basket of narrow-based security futures that together tracks a broad based index and short a broad-based security index call option contract on the same index.	Narrow-based security index ..	20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call may be applied.	20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any.
7	Short a basket of narrow-based security futures that together tracks a broad-based security index and short a broad-based security index put option contract on the same index.	Narrow-based security index ..	20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any.
8	Long a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index put option contract on the same index.	Narrow-based security index ..	20% of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full.	The lower of: (1) of 10% of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the current market value of the long basket of security futures.
9	Short a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index call option contract on the same index.	Narrow-based security index ..	20% of the current market value of the short based of narrow-based security futures, plus pay for the long call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short basket of security futures.
10	Long security future and short security future on the same underlying security (or index).	Individual stock or narrow-based security index.	The greater of: 10% of the current market value of the long security future; or (2) 10% of the current market value of the short security future.	The greater of: 10% of the current market value of the long security future; or (2) 10% of the current market value of the short security future.
11	Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price. (Conversion).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.	10% of the aggregate exercise price, plus the aggregate call in-the-money amount, if any.
12	Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price. (Collar)	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from call sale may be applied.	The lower of: (1) 10% of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, any; or (2) 20% of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.

	Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
13	Short security future and long position in the same security (or securities basket) underlying the security future (or long position in a security immediately convertible into the same security underlying the security future, without restriction, including the payment of money).	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long stock or stocks.	10% of the current market value, as defined in Regulation T, of the long stock or stocks.
14	Short security future (or stock or basket of security futures representing each component of a narrow-based securities index) and long call option or warrant on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus pay for the call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short security future.
15	Short security future, Short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price. (Reverse Conversion)	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any, plus pay for the call in full. Proceeds from put sale may be applied.	10% of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.
16	Long (short) a basket of security future, each based on a narrow-based security index that together tracks the broad-based index and short (long) a broad based-index future.	Narrow-based security index ..	20% of the current market value of the long (short) basket of security futures.	10% of the current market value of the long (short) basket of security futures.
17	Long (short) a basket of security futures that together tracks a narrow-based index and short (long) a narrow based-index future.	Individual stock and narrow-based security index.	The greater of: (1) 20% of the current market value of the long security future(s); or (2) 20% of the current market value of the short security future(s).	The greater of: (1) 10% of the current market value of the long security future(s); or (2) 10% of the current market value of the short security future(s).

[1] Baskets of securities or security futures contracts must represent exactly the same securities that comprise the index, and in the same proportion.

[2] Generally, for the purposes of these rules, unless otherwise specified, stock index warrants shall be treated as if they were index options.

[3] ''Aggregate exercise price,'' with respect to an option or warrant based on an underlying security, means the exercise price of an option or warrant contract multiplied by the numbers of units of the underlying security covered by the option contract or warrant. ''Aggregate exercise price'' with respect to an index option means the exercise price multiplied by the index multiplier. *See, e.g.,* Amex Rules 900 and 900C; CBOE Rule 12.3; and NASD Rule 2522.

[4] ''Out-of-the-money'' amounts must be determined as follows:

(1) For stock call options and warrants, any excess of the aggregate exercise price of the option or warrant over the current market value of the equivalent number of shares of the underlying security.

(2) For stock put options or warrants, any excess of the current market value of the equivalent number of shares of the underlying security over the aggregate exercise price of the option or warrant.

(3) For stock index call options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier.

(4) For stock index put options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant. *See e.g.,* NYSE Rule 431 (Exchange Act Release No. 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (order approving SR–NYSE–99–03)); Amex Rule 462 (Exchange Act Release No. 43582 (November 17, 2000), 65 FR 71151 (November 29, 2000) (order approving SR–Amex–99–27)); CBOE Rule 12.3 (Exchange Act Release No. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving SR–CBOE–97–67)); or NASD Rule 2520 (Exchange Act Release No. 43581 (November 17, 2000), 65 FR 70854 (November 28, 2000) (order approving SR–NASD–00–15)).

[5] ''In the-money'' amounts must be determined as follows:

(1) For stock call options and warrants, any excess of the current market value of the equivalent number of shares of the underlying security over the aggregate exercise price of the option or warrant.

(2) For stock put options or warrants, any excess of the aggregate exercise price of the option or warrant over the current market value of the equivalent number of shares of the underlying security.

(3) For stock index call options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant.

(4) For stock index put options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier.

Q 19 (a) Are there offset positions in addition to those enumerated in the above chart that are consistent with margin requirements for comparable options, which the Commissions should consider adding to the list of permissible offsets?

(b) Are there offset positions included in the above chart, which the Commissions should consider deleting from the list of permissible offsets?

Q 20 Have the Commissions appropriately taken into account the overall risk of a position for the specified offset positions?

Q 21 Are the proposed minimum margin levels prudential and efficient in meeting the objectives of preserving the financial integrity of security futures markets and preventing systemic risk?

Q 22 Are there other ways of meeting the comparability standard in setting margin levels for offsetting positions? For example:

(a) Is it necessary to consider a long or short security futures position to be comparable to a long or short position in an underlying security for the purpose of determining margin for offset positions that only involve security futures and options contracts? If not, commenters are asked for specific recommendations on alternatives.

(b) Does the comparability standard necessitate that initial and maintenance margin requirements for strategy-based offsets be set at different levels?

4. Higher Margin Levels

Notwithstanding the proposed minimum initial and maintenance margin levels specified above, the Commissions further propose that the regulatory authorities may impose on their members initial and maintenance margin levels that are higher than the minimum margin levels specified in Proposed CFTC Rule 41.45(b)(1) and Proposed SEC Rule 402(b)(1).[89] This is to permit regulatory authorities to set higher margin levels as may, from time to time, be considered prudent by such regulatory authorities. In addition, regulatory authorities may permit their members to use a method for calculating required initial and maintenance margin that may result in margin levels that are higher than the minimum margin levels specified in those proposed rules.[90] Any such higher margin requirement would have to be filed with the SEC under Section 19(b) of the Exchange Act.[91] The Commissions also propose that a national securities exchange registered with the SEC under Section 6(g) of the Exchange Act (''Security Futures Product Exchange'') [92] or a national securities association registered with the SEC under Section 15A(k) of the Exchange Act (''Limited Purpose National Securities Association'') [93] may raise or lower the required margin level to a level not lower than that specified in Proposed CFTC Rule 41.45 and Proposed SEC Rule 402,[94] in accordance with Section 19(b)(7) of the Exchange Act.[95]

E. Time Limits for Collection of Margin

The Commissions also propose other margin requirements for security futures. Specifically, the Commissions propose that the amount of initial margin required by Proposed CFTC Rule 41.45 and Proposed SEC Rule 402 would be obtained as promptly as possible and in any event within three business days after the position is established, or within such shorter time period as may be imposed by applicable regulatory authority rules approved by the SEC in accordance with Section 19(b)(2) of the Exchange Act.[96]

Currently, Regulation T requires the collection of margin calls for certain securities covered by Regulation T within five business days after the position is established, and regulatory authority rules require the collection of maintenance margin as promptly as possible and in any event within fifteen business days.[97] To lower counterparty risk in transactions involving security futures, the Commissions are proposing shorter time periods than those permitted by Regulation T. Specifically, the Commissions are proposing a three business day time period.[98]

Further, the Commissions propose that the amount of maintenance margin required by Proposed CFTC Rule 41.45 and Proposed SEC Rule 402 would be obtained as promptly as possible and in any event within three business days after the margin deficiency is created or increased, or within such shorter time period as may be imposed by applicable regulatory authority rules approved by the SEC pursuant to Section 19(b)(2) of the Exchange Act.[99]

Finally, the Commissions propose that the time limits for collection of initial margin may be extended upon application by the creditor to its examining authority [100] to the extent permitted by applicable regulatory authority rules approved by the SEC pursuant to Section 19(b)(2) of the Exchange Act.[101]

Q 23 Are the proposed time limits for collection of margin appropriate for security futures?

F. Forms of Collateral

Section 7(c)(2)(B)(iv) of the Exchange Act requires that the margin requirements for security futures products (other than levels of margin), including the type, form, and use of collateral for security future products, are and remain consistent with the requirements established by the Federal Reserve Board in Regulation T pursuant to subparagraphs (A) and (B) of Section 7(c)(1) of the Exchange Act.[102] Regulation T requires a customer to deposit margin with its broker or dealer whenever securities transactions by the customer, on any given day, create or increase a ''margin deficiency'' [103] in the

[89] *See* Proposed CFTC Rule 41.45(b)(2)(i); Proposed SEC Rule 402(b)(2)(i).

[90] *See* Proposed CFTC Rule 41.45(b)(2)(ii); Proposed SEC Rule 402(b)(2)(ii).

[91] 15 U.S.C. 78s(b).

[92] 15 U.S.C. 78f(g). New subsection 6(g) of the Exchange Act provides an expedited process for an exchange that lists or trades security futures products to register with the SEC as a national securities exchange if that exchange (1) is a board of trade that has been designated as a contract market or is registered as a DTF; and (2) does not act as a market place for transactions in securities other than security futures products. The SEC has adopted rules prescribing the requirements for designated contract markets and DTFs to register as national securities exchange pursuant to Section 6(g) of the Exchange Act. *See* Securities Exchange Act Release No. 44692 (August 13, 2001), 66 FR 43721 (August 20, 2001).

[93] 15 U.S.C. 78*o*–3(k). A futures association registered under Section 17 of the CEA (7 U.S.C. 21) will be registered as a national securities association for the limited purpose of regulating the activities of brokers or dealers registered pursuant to Section 15(b)(11) of the Exchange Act (15 U.S.C. 78*o*(b)(11)) with respect to their activities in security futures products.

[94] 15 U.S.C. 78s(b)(2). *See* Proposed CFTC Rule 41.45(c); Proposed SEC Rule 402(c).

[95] 15 U.S.C. 78s(b)(7). *See infra* note 130 and accompanying text.

[96] *See* Proposed CFTC Rule 41.46(a); Proposed SEC Rule 403(a).

[97] *See, e.g.,* CBOE Rule 12.2.

[98] *See* Proposed CFTC Rule 41.46(a); Proposed SEC Rule 403(a).

[99] 15 U.S.C. 78s(b)(2). *See* Proposed CFTC Rule 41.46(b); Proposed SEC Rule 403(b).

[100] ''Examining authority'' with respect to a creditor is proposed to mean: (1) The regulatory authority of which such creditor is a member, if such creditor is a member of only one regulatory authority; (2) The regulatory authority designated responsibility by the SEC pursuant to 17 CFR 240.17d–1 for examining such creditor for compliance with applicable financial responsibility rules, if a regulatory authority is so designated; or (3) The regulatory authority designated in accordance with 17 CFR 1.52, if such creditor is a member of more than one regulatory authority and the SEC, pursuant to 17 CFR 240.17d–1 has not designated responsibility for examining such creditor for compliance with applicable financial responsibility rules. *See* Proposed CFTC Rule 41.44(a)(3) and Proposed SEC Rule 401(a)(3).

[101] 15 U.S.C. 78s(b)(2). The Commission expect such regulatory authority rules for security futures to be consistent with those rules currently in place for securities. *See, e.g.,* NYSE Rule 434; and NASD Rule 2520.

[102] 15 U.S.C. 78g(c)(2)(B)(iv).

[103] Regulation T defines ''margin deficiency'' as ''the amount by which the required margin exceeds

customer's margin account.[104] Under Regulation T, such a deposit must be made in the form of cash, margin securities, exempted securities, or any combination thereof, within one ''payment period'' [105] after the margin deficiency was created or increased.[106]

For dealings in security futures, the Commissions propose that, under Proposed CFTC Rule 41.47(a) and Proposed SEC Rule 404(a), a broker, dealer or a member of a national securities exchange may accept from a customer as collateral to satisfy its margin requirement, the following: cash, margin securities as defined in Regulation T,[107] exempted securities as defined in Section 3(a)(12) of the Exchange Act,[108] or other collateral permitted under Regulation T to satisfy a margin deficiency in the margin account.

The Commissions also propose under Proposed CFTC Rule 41.47(b) and Proposed SEC Rule 404(b) that nothing in the proposed rules would prevent a regulatory authority from prescribing margin collateral requirements (other than margin levels) including the type, form, and use of collateral for security futures, as long as those requirements are consistent with the requirements of Regulation T, subject to approval by the SEC in accordance with Section 19(b)(2) of the Exchange Act.[109]

Finally, the Commissions propose under Proposed CFTC Rule 41.47(c) and Proposed SEC Rule 404(c) that, for purposes of this section, security futures are not margin securities. This is to clarify that transactions and positions in security futures, like short options, would not have loan value for margin purposes. As is the case with short options, margin deposited on a long or short security future represents a performance bond to assure performance on such contract.

The daily gains and losses on security futures are either credited to the party that made a gain on such contract, or debited from the account of the party that had a loss, such that the margin in each party's account represents only the required amount of performance bond on such contract. Because it is not an asset, a security future cannot be put up as collateral for another security or futures transaction.

III. SEC and CFTC Rule Review Processes Relating to Margin Requirements for Security Futures Products

A. CFTC Rule Review Process and Procedures for Notification of Proposed Rule Changes Related to Margin

In general, designated contract markets, including ''notice-designated'' contract markets,[110] or registered DTFs that propose to make a rule change regarding their security futures margin requirements (other than proposed rule changes that result in higher margin levels) must submit the proposed rule change to the SEC for approval in accordance with Section 19(b) of the Exchange Act.[111] In addition, contract markets designated pursuant to Section 5 of the CEA and registered DTFs are also required under Section 5c(c) of the CEA to make certain filings with the CFTC regarding rule changes, including those for security futures products.[112] Because ATSs are not SROs under the Exchange Act, notice-designated contract markets that are ATSs are not required to submit proposed rule changes to the SEC for approval in accordance with Section 19(b) of the Exchange Act.

Section 5c(c) of the CEA provides for two alternative procedures by which such a designated contract market or registered DTF may implement a proposed rule change.[113] First, in accordance with Section 5c(c)(1) of the CEA, a proposed rule change may be implemented by providing the CFTC with a written certification that the proposed rule change complies with the CEA.[114] Second, Section 5c(c)(2) of the CEA provides that, before the implementation of a proposed rule change, an entity may request that the CFTC grant prior approval of the rule change.[115]

Proposed CFTC Rule 41.48(a) would require any notice-designated contract market that files a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with Section 19(b)(2) of the Exchange Act [116] to concurrently provide to the CFTC a copy of such a proposed rule change and any accompanying documentation filed with the SEC.[117] It is not required to provide any supplemental information, even if such information is subsequently provided to the SEC in the course of the SEC's review of the proposed rule change. The purpose of this proposed rule is to provide the CFTC, as a joint regulator of markets offering security futures products, with timely notification of a proposed rule change.

Proposed CFTC Rule 41.48(b) sets forth the notification process for contract markets designated pursuant to Section 5 of the CEA [118] and registered DTFs. The process by which such an entity is to notify the CFTC of having filed a proposed rule change with the SEC will depend on which procedure under Section 5c(c) of the CEA [119] the entity elects to follow.

Proposed CFTC Rule 41.48(b)(1) would apply to any designated contract market registered under section 5 of the CEA or registered DTF that elects to seek the prior approval of the CFTC for a proposed rule change, in accordance with Section 5c(c)(2) of the CEA.[120] In such case, the contract market or DTF would file its requests with the SEC and CFTC concurrently.

Under Proposed CFTC Rule 41.48(b)(2), an entity that elects to implement a proposed rule change by filing a written certification with the CFTC in accordance with Section 5c(c)(1) of the CEA [121] is required to provide a copy of the proposed rule change and any accompanying

the equity in the margin account.'' 12 CFR 220.2. The ''required margin'' for a position in securities (other than security futures) is based on the ''current market value'' of the securities and determined in accordance with Section 220.12 of Regulation T. 12 CFR 220.12.

[104] 12 CFR 220.4(c).

[105] Regulation T defines ''payment period'' as ''the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of Exchange Act Rule 15c6–1 (17 CFR 240.15c6–1(a)), plus two business days.'' 12 CFR 220.2. Currently, the standard securities settlement cycle under Rule 15c6–1 of the Exchange Act is three business days, resulting in a payment period under Regulation T of five business days.

[106] 12 CFR 220.4(c).

[107] Under Regulation T, margin securities include: (1) any security registered or having unlisted trading privileges on a national securities exchange; (2) any security listed on the Nasdaq Stock Market; (3) any nonequity security; (4) any security issued by either an open-end investment company or unit investment trust which is registered under Section 8 of the Investment Company Act of 1940; (5) any foreign margin stock; and (6) any debt security convertible into a margin security. 12 CFR 220.2.

[108] 15 U.S.C. 78c(a)(12).

[109] 15 U.S.C. 78s(b)(2).

[110] A notice-designated contract market is a national securities exchange registered pursuant to Section 6(a) of the Exchange Act (15 U.S.C. 78f(a)), a national securities association registered pursuant to Section 15A(a) of the Exchange Act (15 U.S.C. 78*o*–3(a)), or an alternative trading system (''ATS'') as defined in Section 1a(1) of the CEA (7 U.S.C. 1a(1)) that is designated as a contract market pursuant to Section 5f of the CEA (7 U.S.C. 7b–1).

[111] 15 U.S.C. 78s(b).

[112] 7 U.S.C. 7a–2(c). Notice-designated contract markets are exempt from the requirements of Section 5c of the CEA pursuant to Section 5f(b)(1)(D) of the CEA (7 U.S.C. 7a–2(b)(1)(D)).

[113] *See also* 66 FR 42256 (August 10, 2001) (CFTC rules implementing these procedures, codified in a new Part 40 of Title 17, Rules 40.5 and 40.6).

[114] 7 U.S.C. 7a–2(c)(1).

[115] 7 U.S.C. 7a–2(c)(2).

[116] 15 U.S.C. 78s(b)(2).

[117] The copy may be submitted to the CFTC electronically, by facsimile, or by delivery of a hard copy.

[118] 7 U.S.C. 7a–2.

[119] 7 U.S.C. 7a–2(c).

[120] 7 U.S.C. 7a–2(c)(2).

[121] 7 U.S.C. 7a–2(c)(1).

documentation that was filed with the SEC, concurrent with the SEC filing. Promptly after the SEC has approved the proposed rule change, the designated contract market or registered DTF will file the written certification with the CFTC.

The CFTC has considered an alternative procedure under which an entity would file its written certification with the CFTC at the same time as it files the proposed rule change with the SEC, rather than after the SEC approves the proposed rule change. This alternative could facilitate immediate implementation of the rule change once the rule is approved by the SEC. The CFTC notes, however, that if the proposed rule change were to be modified during the SEC approval process such that the rule approved by the SEC was not the same rule that had been certified to the CFTC, a new written certification would have to be filed before the rule, as approved, could be implemented.

Q 24 Are there preferable alternative methods for meeting the dual filing requirements for margin rule changes? For example, should designated contract markets and DTFs file a rule certification with the CFTC at the same time as the proposed rule change is submitted to the SEC, and then file a new certification only if the proposed rule change is modified? Or, should an entity be able to choose whether to file a certification with the CFTC after SEC approval of such proposed rule change or at the same time as filing the proposed rule change with the SEC? Commenters are asked to be specific with respect to the costs and administrative convenience of the proposed procedures or any alternative procedures they submit for the CFTC's consideration.

B. SEC Rule Review Process

National securities exchanges registered pursuant to Section 6(a) of the Exchange Act [122] and national securities associations registered pursuant to Section 15A(a) of the Exchange Act [123] must file proposed rule changes, including those related to the trading of securities futures products, with the SEC under Section 19(b)(1) of the Exchange Act.[124] Security Futures Product Exchanges [125] and Limited Purpose National Securities Associations [126] must submit proposed rule changes to the SEC in the following three circumstances.

First, Security Futures Product Exchanges and Limited Purpose National Securities Associations are required to submit proposed rule changes that relate to margin for security futures products, except for those that result in higher margin levels, under Sections 19(b)(1) and (b)(2) of the Exchange Act.[127] Section 19(b)(1) of the Exchange Act states that proposed rule changes are not effective unless approved by the SEC or otherwise permitted in accordance with the provisions of Section 19(b).[128] Section 19(b)(2) of the Exchange Act sets forth the standards by which the SEC must determine whether a proposed rule change submitted pursuant to Section 19(b)(1) of the Exchange Act must be either approved or disapproved.[129] Specifically, the SEC is directed to approve a proposed rule change if it finds that such proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to such SRO, or to disapprove a proposed rule change if it cannot make such a finding.

Second, proposed rule changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations that relate to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such SRO's obligation to enforce the securities laws, must be submitted to the SEC pursuant to new Section 19(b)(7) of the Exchange Act.[130] A proposed rule change filed pursuant to this section may take effect when: (1) A written certification has been filed with the CFTC under Section 5c(c) of the CEA; [131] (2) the CFTC determines that review of the proposed rule change is not necessary; or (3) the CFTC approves the proposed rule change.[132] The SEC, after consultation with the CFTC, has the authority to summarily abrogate a proposed rule change that has taken effect pursuant to Section 19(b)(7)(B) of the Exchange Act [133] if it appears to the SEC that such rule change unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors.[134]

Finally, in the event that the SEC abrogates a proposed rule change, Security Futures Product Exchanges and Limited Purpose National Securities Associations would be required, pursuant to Sections 6(g)(4)(B)(iii) [135] and 15A(k)(3)(C) [136] of the Exchange Act, respectively, to refile the proposed rule change pursuant to the requirements of Section 19(b)(1) of the Exchange Act.[137]

The SEC must (within 35 days of the date of publication of notice of the filing of the proposed rule change, or within such longer period as the SEC may designate up to 90 days after such date if the SEC finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the SRO consents) either by order approve the proposed rule change or, after consultation with the CFTC, institute disapproval proceedings.[138] Section 19(b)(7)(D)(ii) of the Exchange Act [139] states that the SEC must approve a

[122] 15 U.S.C. 78f(a).

[123] 15 U.S.C. 78*o*–3(a).

[124] 15 U.S.C. 78s(b)(1).

[125] *See supra* note 92.

[126] *See supra* note 93.

[127] 15 U.S.C. 78s(b)(1) and (b)(2). *See* Sections 6(g)(4)(B)(ii) and 15A(k)(3)(B) of the Exchange Act (15 U.S.C. 78f(g)(4)(B)(ii) and 15 U.S.C. 78*o*–3(k)(3)(B), respectively). Proposed rule changes filed under Sections 19(b)(1) and (b)(2) of the Exchange Act are submitted pursuant to Rule 19b–4 and Form 19b–4. *See* 17 CFR 240.19b–4; 17 CFR 249.819.

[128] Section 19(b)(3) of the Exchange Act sets forth the categories of proposed rule changes that may take effect upon filing with the SEC. 15 U.S.C. 78s(b)(3).

[129] 15 U.S.C. 78s(b)(2).

[130] 15 U.S.C. 78s(b)(7). *See* Sections 6(g)(4)(B)(i) and 15A(k)(3)(A) of the Exchange Act (15 U.S.C. 78f(g)(4)(B)(i) and 15 U.S.C. 78*o*–3(k)(3)(A), respectively). Section 19(b)(7) of the Exchange Act grants to the SEC the authority to adopt rules regarding the filing of proposed rule changes by Security Futures Product Exchanges and Limited Purpose National Securities Associations. 15 U.S.C. 78s(b)(7). The SEC has adopted Rule 19b–7 and Form 19b–7 to establish procedures for filing proposed rule changes pursuant to Section 19(b)(7) of the Exchange Act. *See* Rule 19b–7, 17 CFR 240.19b–7, and Form 19b–7, 17 CFR 249.822; Securities Exchange Act Release No. 44692 (August 13, 2001), 66 FR 43721 (August 20, 2001).

[131] 7 U.S.C. 7a–2(c). Pursuant to Section 5c(c)(1) of the CEA (7 U.S.C. 7a–2(c)(1)), a registered entity may elect to approve and implement any new rule or rule amendment by providing the CFTC with a written certification that the new rule or rule amendment complies with the CEA.

[132] Pursuant to Section 5c(c)(2) of the CEA (7 U.S.C. 7a–2(c)(2)), a registered entity may elect to seek prior approval of the CFTC for any new rule or rule amendment.

[133] 15 U.S.C. 78s(b)(7)(B). Pursuant to this section, SEC action to abrogate a rule change will not affect the validity or force of the rule change during the period it was in effect.

[134] *See* Section 19(b)(7)(C) of the Exchange Act (15 U.S.C. 78s(b)(7)(C)). The SEC notes that it currently exercises similar authority pursuant to Section 19(b)(3)(C) of the Exchange Act (15 U.S.C. 78s(b)(3)(C)) with respect to proposed rule changes filed by the existing SROs, which are immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)).

[135] 15 U.S.C. 78f(g)(4)(B)(iii).

[136] 15 U.S.C. 78*o*–3(k)(3)(C).

[137] 15 U.S.C. 78s(b)(1).

[138] 15 U.S.C. 78s(b)(7)(D)(i).

[139] 15 U.S.C. 78s(b)(7)(D)(ii).

proposed rule change that has been abrogated and refiled under Section 19(b)(1) of the Exchange Act [140] if the SEC finds that it does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors.

IV. Request for Comments

The Commissions solicit comments on all aspects of Proposed CFTC Rules 41.43 through 41.48 and Proposed SEC Rules 242.400 through 242.404. In addition, the Commissions are seeking responses to the numbered questions posed throughout this proposal.

Commenters are welcome to offer their views on any other matters raised by the proposed rules.

V. Paperwork Reduction Act

A. CFTC

The Paperwork Reduction Act of 1995 (''PRA'') [141] imposes certain requirements on federal agencies (including the CFTC and the SEC) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed rules do not require a new collection of information on the part of any entities subject to the proposed rules. Accordingly, the requirements imposed by the PRA are not applicable to the proposed rules.

B. SEC

The PRA does not apply because the proposed rules do not impose recordkeeping or information collection requirements, or other collections of information which require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

VI. Costs and Benefits of the Proposed Rules

A. CFTC

Section 15(a) of the CEA [142] requires that the CFTC, before promulgating a regulation under the CEA or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) does not require the CFTC to quantify the costs and benefits of a new rule or determine whether the benefits of the rule outweigh its costs. Rather, Section 15(a) simply requires the CFTC to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the CFTC could, in its discretion, give greater weight to any one of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The proposed rules constitute a package of related rule provisions. The rules establish the amount of initial and maintenance customer margin for transactions in security futures. The CFTC believes that the proposed customer margin requirements for security futures are, in accordance with the CFMA, consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to Section 6(a) of the Exchange Act.[143] The CFTC is evaluating the costs and benefits of the proposed rules in light of the specific considerations identified in Section 15(a) of the CEA:

1. Protection of market participants and the public. In general, the proposed rules should further the protection of market participants and the public.

2. Efficiency and competition. As noted above, the proposed margin requirements are consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to Section 6(a) of the Exchange Act, as required under the CFMA, and apply to all exchanges offering security futures. Accordingly, the proposed rules are not expected to have a negative impact on competition.

3. Financial integrity of futures markets and price discovery. The proposed rules should have a positive effect on the financial integrity of security futures markets by protecting against systemic risk.

4. Sound risk management practices. The proposed rules are consistent with sound risk management practices.

5. Other public considerations. The proposed rules would preserve the financial integrity of markets trading security futures and prevent systemic risk, thereby benefiting the public. The CFTC believes, however, that the rules fall short of achieving the maximum benefits at the lowest possible cost. The CFTC believes that portfolio margining for security futures would foster greater market efficiency and provide greater benefits to all market participants, without compromising the financial integrity of the markets or giving rise to systemic risk.[144]

After evaluating these considerations, the CFTC has determined to propose the rules discussed above. The CFTC invites public comment on the application of the cost-benefit provision of Section 15(a) of the CEA in regard to the proposed rules. Commenters are also invited to submit any data that they may have quantifying the costs and benefits of the proposed rules.

B. SEC

Section 7 of the Exchange Act, which governs the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security), was amended by the CFMA to add provisions related to margin for securities futures. On March 6, 2001, the Federal Reserve Board delegated its authority under Section 7(c)(2) of the Exchange Act to establish margin requirements for security futures to the SEC and CFTC. The SEC is proposing new Rules 400 through 404 under the Exchange Act to establish such margin requirements.

Specifically, the CFMA amended Section 7(c) of the Exchange Act to require that the rules preserve the financial integrity of markets trading security futures products, prevent systemic risk, and to require that: (1) The margin requirements for a security future be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to Section 6(a) of the Exchange Act; [145] and (2) the initial and maintenance margin levels for a security future not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to Section 6(a) of the Exchange Act, other than an option on a security future, and to ensure that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security futures, are and remain consistent with the requirements established by the Federal Reserve Board under Regulation T.

The SEC requests comments on all aspects of this cost-benefit analysis, including identification of any additional costs and/or benefits of the proposed rules. The SEC encourages

[140] 15 U.S.C. 78s(b)(1).

[141] 44 U.S.C. 3501 *et seq.*

[142] 7 U.S.C. 19(a).

[143] 15 U.S.C. 78f(a).

[144] *See* Paul H. Kupiec and A. Patricia White, *Regulatory Competition and the Efficiency of Alternative Derivative Product Margining Systems,* 16 The Journal of Futures Markets 943 (1996).

[145] 15 U.S.C. 78f(a).

commenters to identify and supply any relevant data, analysis and estimates concerning the costs and benefits of the proposed rules.

1. Costs

There would likely be various administrative costs to brokers, dealers, and members of national securities exchanges attributable to Proposed SEC Rules 400 through 404. Further, brokers, dealers, and members of national securities exchanges that choose to effect transactions for customers involving, or carrying an account for a customer containing, a security future are responsible for assuring compliance with these proposed rules and thus would incur various costs. While the SEC is unable at this time to estimate the extent of the costs that the proposed rules engender, it has identified below areas where the proposed rules may impose costs.

a. Compliance With Regulation T

Proposed SEC Rule 400(b)(1) would apply Regulation T to financial relations between brokers, dealers, and members of national securities exchanges and their customers with respect to transactions in security futures and any related securities or futures contracts that are used to offset positions in such security futures, to the extent consistent with the proposed rules.[146]

Under this proposed rule, security futures transactions would be recorded in a Margin Account. The proposed margin level requirements represent a performance bond to guarantee contract performance by both the buyer and seller of such contract. Any settlement variation would be credited to (or debited from) the Margin Account.[147] The application of Regulation T provisions by brokers, dealers, or members of national securities exchanges to their customers' security futures positions would require these entities to incur certain costs, such as making systems changes, and hiring personnel, in adhering to Regulation T provisions.

The SEC requests comments, data, and estimates on all aspects of the costs of implementing Regulation T provisions pertaining to security futures.

b. Levels of Margin

Proposed SEC Rule 402(b)(1) sets the level of margin at 20 percent of current market value. The 20 percent level of margin is necessary to fulfill the statutory requirement that the margin requirements for security futures be consistent with the margin requirements for comparable options contracts traded on any national securities exchange registered under Section 6(a) of the Exchange Act.[148]

The SEC notes that the 20 percent margin level may appear to be high when compared to margining methodologies currently used for futures other than security futures. A potential cost of these higher margin requirements is that they may lead to reduced interest in trading security futures and, therefore, foregone hedging opportunities.

However, while margin requirements on non-security futures contracts generally range from 2–10 percent,[149] SEC staff, based on its analysis, estimates that applying traditional futures risk-based margining methods to security futures would require margin of greater than 10 percent.[150] Further, economic research has thus far not been able to establish a strong relationship between futures margin levels and interest in the product.[151] On the other hand, SEC staff estimates that the proposed margin levels would reduce the chances that a margin account would not contain sufficient funds to cover a given day's price movement from approximately 5 percent using traditional risk-based futures margining to 0.3 percent.[152] Therefore, while the margin levels proposed for security futures may impose a cost, the SEC believes that the proposed margin levels would lower chances of customer default and therefore lower systemic risk to the markets. For these reasons, and the statutory mandate that requires comparability between security futures margin and options margin, the SEC preliminarily believes that the proposed margin levels would be appropriate.

The SEC requests comments, data, and estimates on all aspects of the costs associated with the margin level described in Proposed SEC Rule 402(b)(1).

c. Computation of Margin

Proposed SEC Rule 402(b)(1) would require that brokers, dealers, and national securities exchange members compute and ensure, on a daily basis, that the initial and maintenance margin levels for each customer's security future carried or held by such entity are 20 percent of the current market value of such contract. This requirement is designed to assure contract performance and the integrity of the marketplace.[153] In addition, all market participants pay or receive daily settlement variation payments (*i.e.,* the daily net gain or loss on a security future) as a result of all open futures positions being marked to current market value by the clearing organization.

The SEC believes that the daily required computation of the initial and maintenance margin requirements and the collection and disbursement of daily settlement variation for security futures by brokers, dealers, or national securities exchanges members would require these entities to program or reprogram their computer systems to implement the margin computations and the settlement variation procedures for securities futures. These entities may also incur additional data storage costs and resource costs associated with these calculations. The SEC requests comments, data, and estimates on all aspects of the costs associated with the proposed calculations for margin on security futures, including whether Proposed SEC Rule 402(b)(1) under the Exchange Act is likely to require these entities mentioned above to increase the number of staff, or result in additional resource burdens, to perform and implement the required calculations.

[146] For discussion on Regulation T, and the accounts established thereunder, *see supra* notes 15–27 and accompanying text.

[147] Broker-dealers registered with the SEC under Section 15(b)(1) of the Exchange Act may journal any margin excess to the SMA. 15 U.S.C. 78*o*(b)(1).

[148] 15 U.S.C. 78g(c)(2)(B)(iii).

[149] Catrath, A., Adrangi, B and Alleder, M. (2001), *The Impact of Margins in Futures Markets: Evidence from the Gold and Silver Markets,* The Quarterly Review of Economics and Finance, 279.

[150] The SEC staff examined all securities with average daily trading volume greater than 50,000, using data from 2000 from the Center for Research in Security Prices (''CRSP''). Based on this data, the SEC staff calculated the daily price returns and the 30–day historical price volatility for each of the securities examined.

Based on the assumption that cash and futures prices typically move together, the SEC staff conducted a preliminary simulation, using actual security price movements as estimates for would be futures price movements. Based upon these security futures' price estimates, the staff determined the margin requirements for each of these security futures under both the 20 percent strategy-based approach and the traditional risk-based futures approach. The staff examined how often the funds attributable to margin requirements are insufficient to cover the daily price movements of these security futures. This is relevant to the examination of systemic risk because a necessary condition for customer default to occur is the depletion of the funds attributable to margin requirements (assuming no market risk to close out such position).

[151] For further details on these issues, *see* Fishe, R. P. H., Goldberg, L.G., (1986), *The Effects of Margins on Trading in Futures Markets,* Journal of Futures Markets, 261; Fishe, P.H., Goldberg, L.A., Gosnell, T.F. and Sinha, S. (1990), *Margin Requirement in Futures Markets: Their Relationship to Price Volatility,* The Journal of Futures Markets, 541.

[152] *See supra* note 150.

[153] For an in depth discussion of how margin would be computed under the proposed rules, *see supra* notes 62–88 and accompanying text.

d. Notification Requirements Regarding Exempted Borrowers

Proposed SEC Rule 400(b)(3)(iv)(A) would exclude from the proposed margin regulation margin arrangements between a creditor and a borrower with respect to the borrower's financing of proprietary positions in security futures, based on the creditor's good faith determination that the borrower is an ''exempted borrower.'' [154]

Proposed SEC Rule 402(e) would provide that once a broker, dealer, or a member of a national securities exchange ceases to qualify as an exempted borrower, it must notify the creditor (i.e., the broker, dealer, or a national securities exchange member holding the position) of this fact before establishing any new security future positions because any new security future positions would be subject to the proposed rules.

The notification requirement under Proposed SEC Rule 402(e) is likely to result in various minor costs, including personnel time for preparing the notification by any means of communication, and sending such notification by a broker, dealer, or member of a national securities exchange that is required to send a notification to its creditor because it has ceased be an exempted borrower. The SEC requests comments and estimates on the costs associated with this notification requirement.

e. Time Limits for Collection of Margin

Proposed SEC Rules 403(a) and (b) together would require that the amount of initial and maintenance margin required by the proposed rules be obtained as promptly as possible and, in any event, within three business days after the position is established, or within such shorter time period as may be imposed by applicable regulatory authority rules approved by the SEC in accordance with Section 19(b)(2) of the Exchange Act. The SEC believes that the brokers, dealers, or national securities exchange members that are effecting transactions in security futures will need to gather information to determine for each customer's account involving security futures when margin on such position must be obtained from its customers. The SEC requests comments, data, and cost estimates relating to the time limits for collection of margin requirements.

2. Benefits

The benefits of Proposed SEC Rules 400 through 404 are related to the benefits that will accrue as a result of the enactment of the CFMA. By repealing the ban on single stock futures and futures on narrow-based security indexes, the CFMA will enable a greater variety of financial products to be traded that potentially could facilitate price discovery and the ability to hedge. Investors will benefit by having a wider choice of financial products to buy and sell, and markets and market participants will benefit by having the ability to trade these products. These rules are a prerequisite to the commencement of trading in the new products, and therefore, they are also a prerequisite to any benefits that may derive from the availability of these products.

a. Benefits to Brokers, Dealers, and Members of National Securities Exchanges

Proposed SEC Rule 402(b)(1) would provide that the minimum initial and maintenance margin levels for each security future would be 20 percent of the current market value of such contract. Moreover, Proposed SEC Rule 404(a) would provide that a broker, dealer or member of a national securities exchange may accept as collateral cash, margin securities, exempted securities, or other collateral permitted under Regulation T to satisfy a margin deficiency in the margin account.[155] Proposed SEC Rule 404(b) further provides that a regulatory authority may prescribe margin collateral requirements (other than margin levels) including the type, form, and use of collateral for security futures, that are consistent with the requirements under Regulation T.[156]

The SEC preliminarily believes that the margin levels and other margin requirements proposed would provide sound protection from customer default by reducing chances of depletion of margin accounts, and therefore reduce systemic risk associated with the trading of these new products.

b. Benefits to Customers

Additionally, Proposed SEC Rule 402(d) would provide that customers be permitted to offset positions involving security futures with certain related securities or futures.[157] Such offsets would be proposed by regulatory authority rules that would be approved by the SEC pursuant to Section 19(b)(2) of the Exchange Act if such offsets were consistent with the Exchange Act, including the requirement that margin requirements for security futures be no less restrictive than those imposed on options. These offsets likely would provide benefits to customers because such rules would recognize the hedged nature of the certain specified combined strategies and would permit lower margin requirements that better reflect the true risk of those strategies. Because security futures are new products, however, the SEC is unable at this time to quantify these benefits and therefore requests comments, data, and estimates regarding these benefits.

c. Regulatory Benefits

Proposed SEC Rule 400(b)(1) would provide, to the extent consistent with the proposed rules, that Regulation T applies to financial relations, including margin arrangements, between a creditor and a customer with respect to security futures and any related securities or futures contracts that are used to offset positions in security futures. This provision is designed to ensure that existing and future Federal Reserve Board interpretations of Regulation T would apply and that, therefore, margin requirements for security futures would remain consistent without further action by the Commissions.

C. Request for Comments

To assist the SEC and the CFTC in their evaluation of the costs and benefits that may result from the proposed rulemaking, commenters are requested to provide analysis and data relating to the anticipated costs and benefits associated with the proposed rules. Specifically, the SEC and the CFTC request commenters to address whether the proposed rules would generate the anticipated benefits or impose additional costs on U.S. investors or others.

VII. Consideration of Burden on Competition, Promotion of Efficiency, and Capital Formation

Section 3(f) of the Exchange Act [158] requires the SEC, whenever it is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action

[154] For a discussion of who is considered an ''exempted borrower,'' *see supra* notes 54–55 and accompanying text.

[155] For discussion on forms of collateral, *see supra* notes 102–109 and accompanying text.

[156] Such requirements would be proposed by regulatory authority rules approved by the SEC pursuant to Section 19(b)(2) of the Exchange Act, and as applicable, subject to notice to the CFTC in accordance with Section 5c(c) of the CEA.

[157] For an in depth discussion on offsets, *see supra* notes 74–88 and accompanying text.

[158] 15 U.S.C. 78c(f).

will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the SEC, in adopting rules under the Exchange Act, to consider the impact on competition of any rules it adopts.[159] Section 23(a)(2) of the Exchange Act further provides that the SEC may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[160] The rules proposed today would impose initial and maintenance margin requirements on brokers, dealers and members of national securities exchanges that collect customer margin for security futures. The SEC has considered the proposed rules in light of the standards set forth in Sections 3(f)[161] and 23(a)(2)[162] of the Exchange Act.

The SEC preliminarily believes that the proposed rules should promote efficiency by setting forth clear guidelines for brokers, dealers, and members of national securities exchanges when collecting customer margin related to security futures. Further, the SEC believes that the proposed rules will provide sound protection from customer default by reducing chances of depletion of margin accounts, and therefore reduce system risk associated with the trading of these new products.

The SEC also preliminarily believes that the proposed rules would not impose any significant burden on competition. The proposed rules serve only to set forth margin requirements for security futures, including establishing margin levels and margin collateral requirements. Lastly, the SEC preliminarily believes that the proposed rules would not have any impact on capital formation because the proposed rules would merely establish rules governing the collection of customer margin. The SEC notes that these proposed margin requirements would protect brokers, dealers, and members of national securities exchanges from customers' default, thus encouraging participation by these market participants in the trading of futures contracts on both single stocks and narrow-based indexes. Therefore, the SEC preliminarily believes that there could be an increased demand for the underlying securities, resulting in increased capital formation. Nevertheless, the SEC believes that the benefits to the capital formation process principally flow from the CFMA itself, which lifts the ban on trading of single stock futures and narrow-based index stock futures.

The SEC requests comments on the impact of the proposed rules on competition, efficiency and capital formation.

VIII. Regulatory Flexibility Act Certifications

A. CFTC

The Regulatory Flexibility Act (''RFA'')[163] requires that federal agencies, in promulgating rules, consider the impact of those rules on small entities. The proposed rules would affect designated contract markets, registered DTFs, and FCMs. The CFTC has previously established certain definitions of ''small entities'' to be used by the CFTC in evaluating the impact of its rules on small entities in accordance with the RFA.[164]

In its previous determinations, the CFTC has concluded that contract markets are not small entities for purposes of the RFA, based on the vital role contract markets play in the national economy and the significant amount of resources required to operate as SROs.[165] Recently, the CFTC determined that notice-designated contract markets are not small entities for purposes of the RFA.[166] In addition, the CFTC has determined that other trading facilities subject to its jurisdiction, including registered DTFs, are not small entities for purposes of the RFA.[167]

The CFTC also has previously determined that FCMs are not small entities for purposes of the RFA, based on the fiduciary nature of FCM-customer relationships as well as the requirements that FCMs meet certain minimum financial requirements.[168] The CFTC is proposing to determine that notice-registered FCMs,[169] for the reasons applicable to FCMs registered in accordance with Section 4f(a)(1) of the CEA,[170] are not small entities for purposes of the RFA. Brokers or dealers that carry customer accounts and receive or hold funds for those customers, and are notice-registered as FCMs for the purpose of trading security futures, similarly have a fiduciary relationship with their customers and must meet analogous minimum financial requirements.[171]

Additionally, the CFTC notes that Congress mandated that customer margin for security futures be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to Section 6(a) of the Exchange Act.[172] In proposing these rules, the Commissions have striven to fulfill this requirement in the least burdensome way possible.

Accordingly, the Acting Chairman, on behalf of the CFTC, certifies pursuant to 5 U.S.C. 605(b), that the proposed rules will not have a significant economic impact on a substantial number of small entities. The CFTC invites the public to comment on this finding and on its proposed determination that notice-registered FCMs are not small entities for purposes of the RFA.

B. SEC

Section 3(a) of the RFA[173] requires the SEC to undertake an initial regulatory flexibility analysis of the proposed rules on the small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on small entities.[174] Proposed Rules 400 through 404 would apply to brokers, dealers and members of national securities exchanges.

Introducing brokers (''IBs'') and FCM may register as broker-dealers by filing Form BD–N. However, because IBs cannot collect customer margin they are not subject to these rules.[175] In addition, the CFTC has concluded that FCMs are not considered small entities for the purposes of the RFA.[176] Accordingly, there are no FCMs or IBs that are small entities that would be affected by the proposed rules.

The proposed rules would also apply to broker-dealers and members of national securities exchanges. With one exception, all members of national securities exchanges registered under Section 6(a) of the Exchange Act are registered broker-dealers. The SEC believes that some small broker-dealers could be affected by the proposals, but that the proposals will not have a significant impact on a substantial number of small broker-dealers.

[159] 15 U.S.C. 78w(a)(2).

[160] *Id.*

[161] 15 U.S.C. 78c(f).

[162] 15 U.S.C. 78w(a)(2).

[163] 5 U.S.C. 601 *et seq.*

[164] 47 FR 18618–21 (April 30, 1982).

[165] *Id.* at 18619.

[166] 66 FR 44960, 44964 (August 27, 2001).

[167] 66 FR 42256, 42268 (August 10, 2001).

[168] 47 FR at 18619.

[169] A broker or dealer that is registered with the SEC and that limits its futures activities to those involving security futures products, may notice register with the CFTC as an FCM in accordance with Section 4f(a)(2) of the CEA (7 U.S.C. 6f(a)(2)).

[170] 7 U.S.C. 6f(a)(1).

[171] *See* Exchange Act Rule 15c3–1(a)(2), 17 CFR 240.15c–1(a)(2).

[172] 15 U.S.C. 78f(a).

[173] 5 U.S.C. 603(a).

[174] 5 U.S.C. 605(b).

[175] *See* 7 U.S.C. 1(a)(23).

[176] *See* 47 FR 18618–21 (April 30, 1982). *See also* 66 FR 14262, 14268 (March 9, 2001).

In addition, national securities exchanges registered under Section 6(g) of the Exchange Act may have members who are floor brokers or floor traders who are not registered broker-dealers. Floor brokers and floor traders, however, are not eligible to clear securities transactions or collect customer margin, and thus would not be subject to the proposed rules.[177]

Accordingly, the Chairman of the SEC has certified that the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. This certification is attached as Appendix A to this notice.

The SEC invites commenters to address whether the proposed rules would have a significant economic impact on a substantial number of small entities, and if so, what would be the nature of any impact on small entities. The SEC requests that commenters provide empirical data to support the extent of such impact.

IX. Statutory Basis and Text of Proposed Rules

The SEC is proposing Rules 400 through 404 pursuant to the Exchange Act, particularly Sections 3(b), 6, 7(c), 15A and 23(a). Further, these rules are proposed pursuant to the authority delegated jointly to the SEC, together with the CFTC, by the Federal Reserve Board in accordance with Exchange Act Section 7(c)(2)(A). *See* Appendix B.

List of Subjects

17 CFR Part 41

Brokers, Margin, Reporting and recordkeeping, Security futures products.

17 CFR Part 242

Brokers and Securities.

Commodity Futures Trading Commission

17 CFR Chapter I

In accordance with the foregoing, Title 17, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 41—SECURITY FUTURES

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763; 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78g(c)(2).

2. Part 41 is amended by adding §§ 41.43 through 41.48 to read as follows:

§ 41.43 Customer margin—authority, purpose and scope.

(a) *Authority and purpose.* Sections 41.43 through 41.48 are issued by the Commodity Futures Trading Commission (CFTC), jointly with the Securities and Exchange Commission (SEC) 17 CFR 242.400 through 242.404, pursuant to authority delegated by the Board of Governors of the Federal Reserve System under Section 7(c)(2)(A) of the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78g(c)(2)(A)). Its principal purpose is to regulate margin collected by brokers, dealers, and members of national securities exchanges relating to customers' transactions in security futures and imposes, among other requirements, minimum customer initial and maintenance margin levels for such security futures positions.

(b) *Scope of section.* (1) Regulation T (12 CFR part 220) shall apply to financial relations, including margin arrangements, between a creditor and a customer with respect to security futures and any related securities or futures contracts that are used to offset positions in such security futures, to the extent consistent with this part.

(2) This part does not preclude a regulatory authority or creditor from imposing additional margin requirements on security futures, including higher margin levels and risk-sensitive criteria, consistent with this part, or from taking appropriate action to preserve its financial integrity.

(3) This part does not apply to:

(i) Financial relations between a customer and a creditor to the extent that they comply with a portfolio margining system under rules that have become effective in accordance with Section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)) and, as applicable, Section 5c(c) of the Commodity Exchange Act (the ''Act'') (7 U.S.C. 7a–2(c));

(ii) Financial relations between a foreign branch of a creditor and a foreign person involving foreign security futures;

(iii) Margin requirements that clearing agencies registered with the SEC or the CFTC impose on their members; and

(iv) Credit extended, maintained, or arranged by a creditor to or for a member of a national securities exchange or a registered broker or dealer if:

(A) Such creditor makes a good faith determination that the borrower is an exempted borrower;

(B) The borrower otherwise qualifies for exemption pursuant to Section 7(c)(3) of the Exchange Act (15 U.S.C. 78g(c)(3)); or

(C) The borrower is a member of a national securities exchange or a national securities association registered under Section 15A(a) of the Exchange Act (15 U.S.C. 78*o*–3(a)) and the borrower:

(*1*) Does not directly or indirectly accept or solicit orders from any customer or provide advice to any customer in connection with the trading of security futures; and

(*2*) Is registered with such exchange or such association as a security futures dealer, pursuant to regulatory authority rules that have become effective in accordance with Section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)) and, as applicable, Section 5c(c) of the Act (7 U.S.C. 7a–2(c)), that:

(*i*) Require such member to be registered as a floor trader or a floor broker with the CFTC under Section 4f(a)(1) of the Act (7 U.S.C. 6f(a)(1)), or as a dealer with the SEC under Section 15(b) of the Exchange Act (15 U.S.C. 78*o*(b));

(*ii*) Require such member to comply with applicable SEC or CFTC net capital requirements;

(*iii*) Require such member to maintain records sufficient to prove compliance with this paragraph (b)(3)(iv)(C) and the rules of the exchange or association of which the borrower is a member;

(*iv*) Require such member to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis; and

(*v*) Provide for disciplinary action, including revocation of such member's registration as a security futures dealer, for such member's failure to comply with §§ 41.43 through 41.48 or the rules of the exchange or association.

§ 41.44 Customer margin—definitions.

(a) For purposes of this part only, the following terms shall have the meanings set forth in this section.

(1) *Contract multiplier* means the number of units of a narrow-based security index expressed as a dollar amount, in accordance with the terms of the security future contract.

(2) On any day, *current market value* means with respect to a security future:

(i) If the instrument underlying such security future is a stock, the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable number of shares per contract; or

(ii) If the instrument underlying such security future is a narrow-based security index, as defined in section 3(a)(55)(B) of the Exchange Act (15 U.S.C. 78c(a)(55)(B)), the product of the daily settlement price of such security

[177] 7 U.S.C. 1(a)(16) and (17).

future as shown by any regularly published reporting or quotation service, and the applicable contract multiplier.

(3) *Examining authority* with respect to a creditor means:

(i) The regulatory authority of which such creditor is a member, if such creditor is a member of only one regulatory authority;

(ii) The regulatory authority designated responsibility by the SEC pursuant to § 240.17d–1 of this title for examining such creditor for compliance with applicable financial responsibility rules, if a regulatory authority is so designated; or

(iii) The regulatory authority designated in accordance with § 1.52 of this chapter, if such creditor is a member of more than one regulatory authority and the SEC, pursuant to § 240.17d–1 of this title, has not designated responsibility for examining such creditor for compliance with applicable financial responsibility rules.

(4) *Initial margin* means the margin as defined in Section 3(a)(57)(A) of the Exchange Act (15 U.S.C. 78c(a)(57)(A)), that is required when a security future position is opened.

(5) *Maintenance margin* means the margin, as defined in Section 3(a)(57)(A) of the Exchange Act (15 U.S.C. 78c(a)(57)(A)), that is required to be maintained in a customer's securities account, as defined in § 1.3(ww) of this chapter, or futures account, as defined in § 1.3(vv) of this chapter, at the end of each trading day.

(6) *Regulation T* means Regulation T promulgated by the Board of Governors of the Federal Reserve System (''Federal Reserve Board''), 12 CFR part 220.

(7) *Regulatory authority* means a self-regulatory organization that is registered as a national securities exchange under Section 6 of the Exchange Act (15 U.S.C. 78f) or a registered securities association under Section 15A of the Exchange Act (15 U.S.C. 78*o*–3).

(8) *Daily settlement price* means, with respect to a security future, the settlement price of such security future determined at the close of trading each day, under the rules of the applicable exchange or clearing organization.

(b) Terms used in this part and not otherwise defined in this section shall have the meaning set forth in Regulation T (12 CFR part 220).

(c) Terms used in this part and not otherwise defined in this section or in Regulation T (12 CFR part 220) shall have the meaning set forth in the Exchange Act.

§ 41.45 Customer margin—customer margin levels for security futures.

(a) *Applicability.* No broker, dealer or member of a national securities exchange may effect a transaction involving, or carry an account containing, a security future position with or for a customer, without obtaining proper and adequate margin as set forth in this section.

(b) *Amount of customer margin*—(1) *General rule.* The minimum initial and maintenance margin levels for each security future contract shall be 20 percent of the current market value of such contract.

(2) *Exceptions. Provided that* such higher margin levels or calculation methods have become effective in accordance with Section 19(b) of the Exchange Act (15 U.S.C. 78s(b)), nothing in this section shall prevent a regulatory authority from:

(i) Requiring initial and/or maintenance margin levels that are higher than the minimum margin levels specified in paragraph (b)(1) of this section; or

(ii) Using a method for calculating required initial and/or maintenance margin that may result in margin levels that are higher than the minimum margin levels specified in paragraph (b)(1) of this section.

(c) *Procedures for certain margin level adjustments.* An exchange registered under Section 6(g) of the Exchange Act (15 U.S.C. 78f(g)), or a national securities association registered under Section 15A(k) of the Exchange Act (15 U.S.C. 78*o*–3(k)), may raise or lower the required margin level to a level not lower than that specified in this section, in accordance with Section 19(b)(7) of the Exchange Act (15 U.S.C. 78s(b)(7)).

(d) *Offsetting positions.* Notwithstanding the minimum margin levels specified in paragraph (b)(1) of this section, customers with offset positions involving security futures and one or more related securities or futures contracts may, pursuant to regulatory authority rules that have become effective in accordance with Section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)) and, as applicable, Section 5c(c) of the Act (7 U.S.C. 7a–2(c)), have initial or maintenance margin levels that are lower than the levels specified in paragraph (b)(1) of this section, *provided that* such margin levels are not lower than the lowest customer margin levels required for any comparable offset positions involving option contracts traded on any exchange registered pursuant to Section 6(a) of the Exchange Act (15 U.S.C. 78f(a)).

(e) *Change in exempted borrower status.* Once a broker, dealer, or a member of a national securities exchange ceases to qualify as an exempted borrower, it shall notify the creditor of this fact before establishing any new security future positions. Any new security future positions will be subject to the provisions of this part.

§ 41.46 Customer margin—time limits for collection of margin.

(a) *Initial margin.* The amount of initial margin required or permitted by § 41.45 shall be obtained by the creditor as promptly as possible and in any event within three business days after the position is established, or within such shorter time period as may be imposed by applicable regulatory authority rules that have become effective in accordance with section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the Act (7 U.S.C. 7a–2(c)).

(b) *Maintenance margin.* The amount of maintenance margin required or permitted by § 41.45 shall be obtained by the creditor as promptly as possible and in any event within three business days after the margin deficiency is created or increased, or within such shorter time period as may be imposed by applicable regulatory authority rules that have become effective in accordance with section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the Act (7 U.S.C. 7a–2(c)).

(c) *Extension of time limits.* The time limits for collection of initial margin may be extended upon application by the creditor to its examining authority to the extent permitted by applicable regulatory authority rules that have become effective in accordance with section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)) and, as applicable, Section 5c(c) of the Act (7 U.S.C. 7a–2(c)).

§ 41.47 Customer margin—forms of collateral.

(a) A broker, dealer or a member of a national securities exchange may accept as margin collateral:

(1) Cash;

(2) Margin securities;

(3) Exempted securities as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(4) Other collateral permitted under Regulation T (12 CFR part 220) to satisfy a margin deficiency in the margin account.

(b) Nothing in this section shall prevent a regulatory authority from prescribing margin collateral requirements (other than margin levels) including the type, form, and use of collateral for security futures, that are

consistent with the requirements established by the Federal Reserve Board, pursuant to section 7(c)(1)(A) and (B) of the Exchange Act (15 U.S.C. 78g(c)(1)(A) and (B)), subject to approval by the SEC in accordance with section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)) and, as applicable, subject to notice to the CFTC in accordance with section 5c(c) of the Act (7a U.S.C. 7a–2(c)).

(c) For the purposes of this section, security futures are not margin securities.

§ 41.48 Customer margin—filing proposed margin rule changes with the CFTC.

(a) *Notification requirement for notice-registered contract markets.* Any regulatory authority that is registered with the CFTC as a designated contract market under section 5f of the Act (7 U.S.C.7b–1) shall, when filing a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)), concurrently provide to the CFTC a copy of such proposed rule change and any accompanying documentation filed with the SEC.

(b) *Filing requirements under the Act.* Any regulatory authority that is registered with the CFTC as a designated contract market or derivatives transaction execution facility under section 5 of the Act (7 U.S.C. 7) shall, when filing a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)), notify the CFTC as follows:

(1) If the regulatory authority elects to request CFTC prior approval for the proposed rule change pursuant to section 5c(c)(2) of the Act (7 U.S.C. 7a–2(c)(2)), it shall concurrently file the proposed rule change with the CFTC in accordance with § 40.5 of this chapter.

(2) If the regulatory authority elects to implement a proposed rule change by written certification pursuant to section 5c(c)(1) of the Act (7 U.S.C. 7a–2(c)(1)), it shall concurrently provide to the CFTC a copy of the proposed rule change and any accompanying documentation filed with the SEC. Promptly after obtaining SEC approval for the proposed rule change, such regulatory authority shall file its written certification with the CFTC in accordance with § 40.6 of this chapter.

Dated: September 26, 2001.

By the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary.

Securities and Exchange Commission

17 CFR Chapter II

In accordance with the foregoing, Title 17, chapter II, part 242 of the Code of Federal Regulations is proposed to be amended as follows:

PART 242—REGULATIONS M AND ATS

1. The authority citation for part 242 is revised to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

2. Sections 242.400 through 242.404 are added to read as follows:

§ 242.400 Customer margin requirements for security futures—Authority, purpose and scope.

(a) *Authority and purpose.* Sections 242.400 through 242.404 are issued by the Securities and Exchange Commission (SEC), jointly with the Commodity Futures Trading Commission (CFTC) 17 CFR 41.43 through 41.48, pursuant to authority delegated by the Board of Governors of the Federal Reserve System under section 7(c)(2)(A) of the Securities Exchange Act of 1934 (''Act'') (15 U.S.C. 78g(c)(2)(A)). Its principal purpose is to regulate margin collected by brokers, dealers, and members of national securities exchanges relating to customers' transactions in security futures and imposes, among other requirements, minimum customer initial and maintenance margin levels for such security futures positions.

(b) *Scope of section.* (1) Regulation T (12 CFR part 220) shall apply to financial relations, including margin arrangements, between a creditor and a customer with respect to security futures and any related securities or futures contracts that are used to offset positions in such security futures, to the extent consistent with this part.

(2) This part does not preclude a regulatory authority or creditor from imposing additional margin requirements on security futures, including higher margin levels and risk-sensitive criteria, consistent with this part, or from taking appropriate action to preserve its financial integrity.

(3) This part does not apply to:

(i) Financial relations between a customer and a creditor to the extent that they comply with a portfolio margining system under rules that have become effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the Commodity Exchange Act (''CEA'') (7 U.S.C. 7a–2(c));

(ii) Financial relations between a foreign branch of a creditor and a foreign person involving foreign security futures;

(iii) Margin requirements that clearing agencies registered with the SEC or the CFTC impose on their members; and

(iv) Credit extended, maintained, or arranged by a creditor to or for a member of a national securities exchange or a registered broker or dealer if:

(A) Such creditor makes a good faith determination that the borrower is an exempted borrower;

(B) The borrower otherwise qualifies for exemption pursuant to section 7(c)(3) of the Act (15 U.S.C. 78g(c)(3)); or

(C) The borrower is a member of a national securities exchange or national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78*o*–3(a)) and the borrower:

(*1*) Does not directly or indirectly accept or solicit orders from any customer or provide advice to any customer in connection with the trading of security futures; and

(*2*) Is registered with such exchange or such association as a security futures dealer, pursuant to regulatory authority rules, approved by the SEC in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), that:

(*i*) Require such member to be registered as a floor trader or a floor broker with the CFTC under section 4f(a)(1) of the CEA (7 U.S.C. 6f(a)(1)), or as a dealer with the SEC under section 15(b) of the Act (15 U.S.C. 78o(b));

(*ii*) Require such member to comply with applicable SEC or CFTC net capital requirements;

(*iii*) Require such member to maintain records sufficient to prove compliance with this paragraph (b)(3)(iv)(C) and the rules of the exchange or association of which the borrower is a member;

(*iv*) Require such member to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis; and

(*v*) Provide for disciplinary action, including revocation of such member's registration as a security futures dealer, for such member's failure to comply with §§ 242.400 through 242.404 or the rules of the exchange or association.

§ 242.401 Definitions.

(a) For purposes of this part only, the following terms shall have the meanings set forth in this section.

(1) *Contract multiplier* means the number of units of a narrow-based security index expressed as a dollar amount, in accordance with the terms of the security future contract.

(2) On any day, *current market value* means with respect to a security future:

(i) If the instrument underlying such security future is a stock, the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable number of shares per contract;

(ii) If the instrument underlying such security future is a narrow-based security index, as defined in section 3(a)(55)(B) of the Act (15 U.S.C. 78c(a)(55)(B)), the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable contract multiplier.

(3) *Examining authority* with respect to a creditor means:

(i) The regulatory authority of which such creditor is a member, if such creditor is a member of only one regulatory authority;

(ii) The regulatory authority designated responsibility by the SEC pursuant to § 240.17d–1 of this chapter for examining such creditor for compliance with applicable financial responsibility rules, if a regulatory authority is so designated; or

(iii) The regulatory authority designated in accordance with § 1.52 of this title, if such creditor is a member of more than one regulatory authority and the SEC, pursuant to § 240.17d–1 of this chapter, has not designated responsibility for examining such creditor for compliance with applicable financial responsibility rules.

(4) *Initial margin* means the margin as defined in section 3(a)(57)(A) of the Act (15 U.S.C. 78c(a)(57)(A)), that is required when a security future position is opened.

(5) *Maintenance margin* means the margin, as defined in section 3(a)(57)(A) of the Act (15 U.S.C. 78c(a)(57)(A)), that is required to be maintained in a customer's securities account or commodity interest account at the end of each trading day.

(6) *Regulation T* means Regulation T promulgated by the Board of Governors of the Federal Reserve System (''Federal Reserve Board''), 12 CFR part 220.

(7) *Regulatory authority* means a self-regulatory organization that is registered as a national securities exchange under section 6 of the Act (15 U.S.C. 78f) or a registered securities association under section 15A of the Act (15 U.S.C. 78*o*–3).

(8) *Daily settlement price* means, with respect to a security future, the settlement price of such security future determined at the close of trading each day, under the rules of the applicable exchange or clearing organization.

(b) Terms used in this part and not otherwise defined in this section shall have the meaning set forth in Regulation T (12 CFR part 220).

(c) Terms used in this part and not otherwise defined in this section or in Regulation T (12 CFR part 220) shall have the meaning set forth in the Act.

§ 242.402 Customer margin for security futures.

(a) *Applicability.* No broker, dealer or member of a national securities exchange may effect a transaction involving, or carry an account containing, a security future position with or for a customer, without obtaining proper and adequate margin as set forth in this section.

(b) *Amount of customer margin*—(1) *General rule.* The minimum initial and maintenance margin levels for each security future contract shall be twenty (20) percent of the current market value of such contract.

(2) *Exceptions. Provided* that such higher margin levels or calculation methods have become effective in accordance with Section 19(b) of the Act (15 U.S.C. 78s(b)), nothing in this section shall prevent a regulatory authority from:

(i) Requiring initial and/or maintenance margin levels that are higher than the minimum margin levels specified in paragraph (b)(1) of this section; or

(ii) Using a method for calculating required initial and/or maintenance margin that may result in margin levels that are higher than the minimum margin levels specified in paragraph (b)(1) of this section.

(c) *Procedures for certain margin level adjustments.* An exchange registered under section 6(g) of the Act (15 U.S.C. 78f(g)), or a national securities association registered under section 15A(k) of the Act (15 U.S.C. 78*o*–3(k)), may raise or lower the required margin level to a level not lower than that specified in this section, in accordance with section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)).

(d) *Offsetting positions.* Notwithstanding the minimum margin levels specified in paragraph (b)(1) of this section, customers with offset positions involving security futures and one or more related securities or futures contracts may, pursuant to regulatory authority rules approved by the Commission in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), have initial or maintenance margin levels that are lower than the levels specified in paragraph (b)(1) of this section, *provided that* such margin levels are not lower than the lowest customer margin levels required for any comparable offset positions involving option contracts traded on any exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)).

(e) *Change in exempted borrower status.* Once a broker, dealer, or a member of a national securities exchange ceases to qualify as an exempted borrower, it shall notify the creditor of this fact before establishing any new security future positions. Any new security future positions will be subject to the provisions of this part.

§ 242.403 Time limits for collection of margin.

(a) *Initial margin.* The amount of initial margin required or permitted by § 242.402 shall be obtained by the creditor as promptly as possible and in any event within three (3) business days after the position is established, or within such shorter time period as may be imposed by applicable regulatory authority rules approved by the Commission in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).

(b) *Maintenance margin.* The amount of maintenance margin required or permitted by § 242.402 shall be obtained by the creditor as promptly as possible and in any event within three (3) business days after the margin deficiency is created or increased, or within such shorter time period as may be imposed by applicable regulatory authority rules approved by the SEC in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).

(c) *Extension of time limits.* The time limits for collection of initial margin may be extended upon application by the creditor to its examining authority to the extent permitted by applicable regulatory authority rules approved by the Commission in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).

§ 242.404 Forms of collateral.

(a) A broker, dealer or a member of a national securities exchange may accept as margin collateral:

(1) Cash;

(2) Margin securities;

(3) Exempted securities as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)); or

(4) Other collateral permitted under Regulation T (12 CFR part 220) to satisfy a margin deficiency in the margin account.

(b) Nothing in this section shall prevent a regulatory authority from prescribing margin collateral requirements (other than margin levels) including the type, form, and use of collateral for security futures, that are consistent with the requirements established by the Federal Reserve Board, pursuant to Section 7 (c)(1)(A) and (B) of the Act (15 U.S.C. 78g(c)(1)(A) and (B)), subject to approval by the Commission in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, subject to notice to the CFTC in accordance with section 5c(c) of the CEA (7 U.S.C. 7a–2(c)).

(c) For the purposes of this section, security futures are not margin securities.

Dated: September 26, 2001.

By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A and B to the preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Harvey L. Pitt, Chairman of the Securities and Exchange Commission (the ''Commission''), hereby certify, pursuant to 5 U.S.C. § 605(b), that the rules proposed in Section 242.400, *et seq.*, under the Securities Exchange Act of 1934 (''Exchange Act''), which would regulate margin collected by brokers, dealers, and members of national securities exchanges relating to customers' transactions in security futures and impose, among other requirements, minimum customer initial and maintenance margin levels for such security futures positions, would not, if adopted, have a significant economic impact on a substantial number of small entities.

The proposed rules would affect brokers, dealers, and members of national securities exchanges. Futures commission merchants (''FCMs'') and introducing brokers (''IBs'') may register as broker-dealers by filing Form BD–N. The Commodities Futures Trading Commission has concluded that FCMs are not considered small entities for the purposes of RFA.[178] In addition, because IBs cannot collect customer margin they are not subject to these rules. Accordingly, there are no FCMs or IBs that are small entities that would be affected by the proposed rules.

The proposed rules would also apply to broker-dealers and members of national securities exchanges. With one exception, all members of national securities exchanges registered under Section 6(a) of the Exchange Act are registered broker-dealers. The Commission believes that some small broker-dealers could be affected by the proposals, but that the proposals would not have a significant impact on a substantial number of small broker-dealers.

In addition, national securities exchanges registered under Section 6(g) of the Exchange Act may have members who are floor brokers or floor traders who are not registered broker-dealers. Floor brokers and floor traders, however, are not eligible to clear securities transactions or collect customer margin, and thus would not be subject to the proposed rules.

Accordingly, the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities.

Dated: September 25, 2001.

Harvey L. Pitt,

Chairman.

Appendix B

March 6, 2001.

Mr. James E. Newsome,

Acting Chairman, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW., Washington, DC 20581

Ms. Laura S. Unger

Acting Chairman, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dear Acting Chairman Newsome and Acting Chairman Unger: Section 206(b) of the Commodity Futures Modernization Act of 2000 (CFMA) amends the Securities Exchange Act of 1934 (SEA), in part by adding a new section 7(c)(2) to provide the Board of Governors of the Federal Reserve System with authority to prescribe margin regulations for brokers, dealers, and members of national securities exchanges extending credit to or collecting margin from customers on security futures products. The Board must prescribe regulations establishing initial and maintenance margin levels for these contracts or delegate the authority jointly to the Commodity Futures Trading Commission and the Securities Exchange Commission (the Commissions).

The Board has long taken the position that the regulatory authorities most familiar with the operation of the financial markets should play a key role in federal oversight of margin policy for these markets. In addition, the Board believes that the most important function of customer margin requirements should be prudential, that is, protection of lenders from credit losses. The Commissions have responsibility for regulating the securities and futures markets and will jointly oversee the exchanges trading security futures products. Furthermore, the Commissions are responsible for all other prudential supervision of the broker-dealers and exchange members covered by the new margin authority. These factors lead the Board to conclude that the Securities Exchange Commission and the Commodity Futures Trading Commission, jointly, are the most appropriate entities to exercise the functions assigned to the Board under section 7(c)(2) of the SEA.

Accordingly, the Board hereby delegates its authority under section 7(c)(2) of the SEA to the Commodity Futures Trading Commission and the Securities Exchange Commission, jointly, until further notice from the Board. The authority delegated by the Board is limited to customer margin requirements imposed by brokers, dealers, and members of national securities exchanges. It does not cover requirements imposed by clearing agencies on their members. Furthermore, the Board notes that section 7(c)(3) exempts the financing of proprietary positions of certain broker-dealers and members of securities exchanges as well as the financing of their market making and underwriting activities from the scope of federal margin regulation. Under the CFMA, futures commission merchants (FCMs), floor brokers, and floor traders who trade security futures products must become broker-dealers or members of a national securities exchange, and therefore, may be exempt under section 7(c)(3) from regulation pursuant to the delegated authority when they obtain credit. The exempt status of FCMs and floor brokers will depend upon whether a substantial portion of their business consists of transactions with persons other than broker-dealers. In the current open-outcry environment, the Board believes that floor traders act as market makers and therefore would be exempt. The Board expects to have further discussions with the Commissions to identify the conditions under which floor traders would act as market makers in an electronic trading environment.

The Board requests that the Commodity Futures Trading Commission and the Securities Exchange Commission, either jointly or severally, report to the Board annually on their experience exercising the delegated authority. In particular, the Board requests that the Commissions provide an assessment of progress toward adopting more risk-sensitive, portfolio-based approaches to margining security futures products. The Board has encouraged the development of such approaches by, for example, amending its Regulation T so that portfolio margining systems approved by the Securities Exchange Commission can be used in lieu of the strategy-based system embodied in the Board's regulation. The Board anticipates that the creation of security future products will provide another opportunity to develop more risk-sensitive, portfolio-based approaches for all securities, including security options and security futures products.

Very truly yours,

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–24574 Filed 10–3–01; 8:45 am]

BILLING CODES 6351–01–P; 8010–01–P

[178] *See* 47 FR 18618, 18618–21 (April 30, 1982). *See also* 66 FR 14262, 14268 (March 9, 2001).

Federal Register

Thursday,
October 4, 2001

Part IV

Securities and Exchange Commission

17 CFR Parts 230, 232, 239, etc.
Mandated EDGAR Filing for Foreign Issuers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 249, and 269

[Release Nos. 33–8016, 34–44868, International Series Release No. 1250; File No. S7–18–01]

RIN 3235–AI08

Mandated EDGAR Filing for Foreign Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are publishing for comment proposed amendments to Regulation S–T, the rules that govern our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. These amendments would require foreign private issuers and foreign governments to file electronically through the EDGAR system their securities documents, including registration statements under the Securities Act of 1933 and registration statements, reports and other documents under the Securities Exchange Act of 1934. Currently our rules only permit, but do not require, foreign issuers to file their securities documents on EDGAR. By mandating the electronic filing of foreign issuers' securities documents on EDGAR, we hope to realize the same investor benefits and the same efficiencies in information transmission, dissemination, retrieval and analysis achieved since we mandated EDGAR filing for domestic issuers in 1993.

DATES: Please submit your comments on or before December 3, 2001.

ADDRESSES: Please submit three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You also may submit your comments electronically at the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–18–01; include this file number in the subject line if you use electronic mail. We will make comment letters available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. We will post electronically submitted comment letters on our Internet web site (http://www.sec.gov).[1]

[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Elliot B. Staffin, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990.

SUPPLEMENTARY INFORMATION: We propose to rescind Rule 601[2] under Regulation S–T[3] and to amend the following rules and forms: Rules 403 and 493[4] under the Securities Act of 1933 (''Securities Act'');[5] Rules 100, 101, 303, 306, and 311[6] under Regulation S–T; Rule 12b–12[7] under the Securities Exchange Act of 1934 (''Exchange Act'');[8] and Forms F–7, F–8, F–9, F–10, F–80, F–X, and CB under the Securities Act;[9] and Forms 20–F and 6–K under the Exchange Act.[10]

Table of Contents

I. Background
A. Mandated EDGAR Rules for Foreign Filers Should Result in the Same Benefits Achieved by Our Adoption of Mandated EDGAR Rules for Domestic Filers
B. Technological Advances Support Extending Mandated EDGAR Filing to Foreign Issuers
II. The Proposed Rule Amendments
A. Amendments to Regulation S–T Sections 100 and 601
B. Foreign Issuer Forms and Documents Affected by the Amendments
1. Securities Act Registration Statements and Exchange Act Registration Statements and Reports
2. Multijurisdictional Disclosure System Forms
3. Schedules 13D and 13G and Tender Offer Schedules
4. Form CB
5. Forms F–X and F–N
6. Exhibits
7. Trust Indenture Act Forms
8. Hardship Exemptions
9. Comment Solicited
C. Electronic Filing Hours
D. Treatment of Foreign Language Documents
1. Treatment under Rule 306, the Electronic Filing Rule
2. Elimination of the Summary Option under Rules 403(c) and 12b–12(d), the Rules for Paper Filings Submitted under a Hardship Exemption or Rule 101 of Regulation S–T
3. Foreign Language Instructions on Form 6–K and MJDS Forms
4. Comment Solicited
E. Amendment to Require Electronic Filing Instruction for Schedule B Registrants That Are Incorporating by Reference
F. Treatment of Supranational Entities' Reports
G. Documents Submitted Pursuant to Exchange Act Rule 12g3–2(b)
H. Transition Period
III. Cost-Benefit Analysis
A. Expected Benefits
B. Expected Costs
C. Comment Solicited
IV. Promotion of Efficiency, Competition and Capital Formation Analysis
V. Paperwork Reduction Act Analysis
VI. Regulatory Flexibility Act Certification
VII. Statutory Basis and Text of Proposed Rule Amendments

[2] 17 CFR 232.601.

[3] 17 CFR 232.10 *et seq.*

[4] 17 CFR 230.403 and 230.493.

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

[6] 17 CFR 232.100, 232.101, 232.303, 232.306 and 232.311.

[7] 17 CFR 240.12b–12.

[8] 15 U.S.C. 78a *et seq.*

[9] 17 CFR 239.37, 239.38, 239.39, 239.40, 239.41, 239.42, and 239.800. Forms F–X and CB are also authorized as Exchange Act forms under 17 CFR 249.250 and 249.480. Form F–X is further authorized under the Trust Indenture Act of 1939 (''Trust Indenture Act'') [15 U.S.C. 77aaa *et seq.*] under Trust Indenture Act Rule 269.5 [17 CFR 269.5].

[10] 17 CFR 249.220f and 249.306.

I. Background

EDGAR is the Securities and Exchange Commission's electronic data gathering, analysis and retrieval system[11] that enables registered companies and other persons to file their securities documents with the Commission in electronic format.[12] Filings submitted on EDGAR are available to the public on our web site as well as through many other information providers. In the Commission's fiscal year 2000 alone, registrants and other persons submitted over 305,000 filings on EDGAR.

We initially launched EDGAR as a pilot program in 1984, which enabled companies to participate voluntarily in the EDGAR system until 1993.[13] At that time, the Commission adopted rules to implement the operational phase of EDGAR, which imposed electronic filing requirements only on domestic issuers.[14] While we encouraged foreign issuers to file their securities documents on EDGAR ''so as to encourage transnational capital formation in increasingly global markets,''[15] these

[11] We encourage foreign issuers and others who are unfamiliar with our EDGAR system to review the document entitled *Electronic Filing and the EDGAR System: A Regulatory Overview* (''*EDGAR Overview*''), dated November 14, 2000, which is available on our website located at www.sec.gov/info/edgar/overview1100.htm.

[12] Filers can currently submit documents in electronic format by direct transmission, either by using a dial-up modem or Internet service provider, or on magnetic cartridge. EDGAR filers may submit documents formatted either in American Standard Code for Information Interchange (''ASCII'') or a version of HyperText Markup Language (''HTML''). Filers also may choose to provide an unofficial copy of a filing in Portable Document Format (''PDF''). *EDGAR Overview* at Section C.1.

[13] Release No. 33–6977 (February 23, 1993) [58 FR 14628].

[14] Following adoption of the operational EDGAR rules in 1993, we phased in the electronic filing requirements for domestic issuers in discrete groups. The last group of domestic issuers became mandated EDGAR filers in May 1996. Release No. 33–7369 (December 6, 1996) [61 FR 65440].

[15] Release No. 33–6977, text at n. 72.

issuers are not generally required to file electronically.[16] Nevertheless, because of EDGAR's advantages over paper filing, many foreign issuers have chosen to file their securities documents on EDGAR on a voluntary basis.[17]

A. Mandated EDGAR Rules for Foreign Filers Should Result in the Same Benefits Achieved by Our Adoption of Mandated EDGAR Rules for Domestic Filers

Since its inception, the primary goals of our EDGAR system have been to facilitate the rapid dissemination of financial and business information about companies and other parties participating in U.S. capital markets while making the delivery and the Commission's processing of filings more efficient. Mandated electronic filing benefits members of the investing public and the financial community by making available to them information contained in Commission filings minutes after the Commission has received them.[18] In addition, the electronic format of the information facilitates research and data analysis. Filers also benefit from electronic dissemination of information since it fosters increased market exposure for their securities. At the same time, filers benefit from the speedy and secure delivery afforded by electronic filing as well as from the efficiencies achieved in the Commission's review and processing of their filings.

By requiring foreign entities to file their Securities Act and Exchange Act documents on EDGAR, we seek to achieve the same benefits sought when we first adopted mandated EDGAR rules for domestic filers. These requirements will facilitate more rapid dissemination of financial and other material information about foreign issuers than under our current paper filing system. Because investors, analysts and others will have quicker access to this information, electronic dissemination should foster enhanced market exposure for a foreign filer's securities.

Foreign issuers should also realize increased efficiencies in the filing process. The direct electronic transmission of securities documents will take significantly less time than traditional methods of paper delivery while offering a secure and reliable method of delivery. The use of EDGAR also will facilitate more efficient storage, retrieval, and analysis of financial and other material information about foreign filers than under the current paper and microfiche regime.[19] Quicker access to a foreign issuer's financial and other material information should not only facilitate staff review of a particular foreign issuer's registration statement or report but should also enhance the Commission's ability to study and address issues that confront foreign issuers.

B. Technological Advances Support Extending Mandated EDGAR Filing to Foreign Issuers

We based the initial exclusion of foreign issuers from the mandated EDGAR regime in part on our belief that foreign issuers would incur higher costs from the implementation of EDGAR than those faced by domestic filers.[20] In the initial operational phase of EDGAR, with the Internet relatively undeveloped compared to today, electronic filers could only transmit their documents directly to the Commission over long distance telephone lines and not over the Internet.[21] As a result, foreign filers that attempted to transmit directly their electronic documents to the Commission faced higher long distance transmission costs than those borne by domestic companies. Depending on their location, foreign filers also faced potential shortages of long distance lines and proper telecommunications equipment, such as compatible modems. Foreign filers also faced the widespread local unavailability of necessary computer hardware and software and trained personnel capable of transforming their documents into EDGAR compatible files.

While we recognized the potential for increased burdens and higher costs for foreign filers that could have resulted from mandated electronic filing in the early stages of EDGAR, we also stated then that we might require foreign issuers to file their securities documents electronically at some future date.[22] Since that time, numerous, significant advances in information and telecommunications technology have occurred that have dramatically increased Internet use by businesses, consumers, investors, and government agencies. These advances have transformed the Internet into a primary means for the rapid dissemination and retrieval of information. As a result, the investing public currently expects information about both foreign and domestic companies to be available electronically.[23]

Today many companies maintain websites on which they post their annual and periodic reports, press releases and other information of interest to investors, customers and other persons. Many of these companies are foreign private issuers that are Exchange Act reporting companies. By accessing these websites, individuals can obtain vast amounts of financial and other information in a matter of seconds.

The Commission, and a growing number of foreign securities commissions, have harnessed the

[16] Currently, we require a foreign issuer or person to file a document on EDGAR only if it jointly files a registration statement or some other document with a domestic issuer or if it files a document, such as a Schedule 13D or tender offer schedule, that pertains to a registered domestic issuer. See Rules 101(c) [17 CFR 232.101(c)] and 601(a) of Regulation S–T [17 CFR 232.601(a)].

[17] Regulation S–T currently provides for the voluntary participation of foreign issuers in the EDGAR system under Rules 100(a) [17 CFR 232.100(a)] and 601(a) and (b) [17 CFR 232.601(a) and (b)]. However, some foreign private issuers, such as Canadian registrants that use the multijurisdictional disclosure system (''MJDS'') and foreign governments, have not been able to file voluntarily on EDGAR due to the lack of electronic form types for some filings.

[18] While EDGAR filings are available on our website approximately 24 hours after we have received them, many third-party service providers make EDGAR filings available to their subscribers within minutes of our receipt of these filings.

[19] On an ongoing basis, foreign companies are required to submit to the SEC press releases, shareholder reports and other materials that contain information that is material to an investment decision. See Form 6–K, General Instruction B. Foreign companies publish these materials in their home countries in accordance with home market law or custom. By requiring foreign companies to file on EDGAR, we would improve public access to these home market materials as well as all SEC-mandated reports, prospectuses and other documents.

[20] See, for example, Release No. 33–6651 (June 26, 1986) [51 FR 24155] in which we sought public comment on our preliminary ideas for rules governing the operational phase of EDGAR. In that release, we justified the voluntary participation of foreign filers in the initial EDGAR operational phase on the grounds that it would give foreign filers ''more time to test for compatible equipment and transmission modes.'' Release No. 33–6651, text following n.23.

[21] During most of the operational phase of EDGAR, filers have been able to submit electronically formatted documents on EDGAR via direct transmission by dial-up modem, diskette, or magnetic tape. In 2000, we amended the EDGAR rules, among other things, to eliminate diskettes and magnetic tape and to add magnetic cartridges and the Internet as means of transmitting filings electronically to the Commission. Release No. 33–7855 (April 24, 2000) [65 FR 24788].

[22] Release No. 33–6977, n. 60. In a more recent release, we noted and solicited comment on our intention to propose at some future date mandated EDGAR filing for foreign issuers. Release No. 33–7803 (February 25, 2000) [65 FR 11507]. We received a few letters that commented specifically on our anticipated EDGAR rulemaking for foreign issuers. These commenters favored electronic filing requirements for foreign issuers. We will consider these comments along with any new comments received as part of this current rulemaking.

[23] While we expected investors and others to benefit from the electronic dissemination of information at the outset of EDGAR, the technological advances that have occurred since then, and particularly the use of the Internet, have dramatically increased these benefits. Investors frequently call Commission staff seeking electronic access to foreign issuers' filings.

advances in information technology to develop electronic filing systems that are linked to their respective websites. By visiting these websites, individuals can gain access to a reporting company's securities documents. For example, the securities commissions of Canada,[24] Brazil[25] and Argentina[26] require their domestic registered companies to file their securities documents electronically. The securities commissions of France,[27] Spain[28] and Korea[29] permit their domestic registered companies to file their securities documents electronically.[30] Each of these commissions maintains a website that is linked to the websites of major stock exchanges and other securities regulatory bodies.[31] Consequently, an investor that visits these commissions' websites can find financial, business and market information about many public companies.

Because of recent advances in information technology, over 80% of foreign private issuers that were Exchange Act reporting companies as of December 31, 2000 already have electronically formatted their financial statements and other material information either for presentation on their websites or to comply with the requirements of their home country securities commissions.[32] These advances in information technology also have increased the number of foreign private issuers that have chosen to file voluntarily their securities documents with the Commission on EDGAR. Of the 1,310 foreign private issuers that were Exchange Act reporting companies as of December 31, 2000,[33] 232 (approximately 18%) chose to file their securities documents on EDGAR during the year 2000.

Foreign governments also use the Internet to disseminate a wide range of financial, economic and other information. Financial information for foreign governments is available electronically through the International Monetary Fund (''IMF'') website.[34] The IMF website provides a list of foreign countries and redisseminates in a common template and in U.S. dollars financial data on international reserves and foreign currency liquidity reported by foreign governments. For some foreign countries, the IMF website also provides access to the websites of government departments that provide financial information electronically. For example, the IMF website provides links to the finance ministries or central banks of Australia, Brazil, Canada, Germany, Hong Kong Special Administrative Region of the People's Republic of China, Israel, Japan, Mexico, the Netherlands, and the United Kingdom.

These technological advances regarding the Internet and modernization of the EDGAR system should serve to mitigate the costs resulting from mandated EDGAR filing for foreign issuers. For example, today a foreign issuer that seeks to file electronically with the Commission is likely to be able to transmit its electronically formatted documents to us over the Internet through the use of an Internet service provider, thereby saving long distance telecommunications transmission costs.[35] In addition, a foreign issuer wanting filing assistance is now more likely to be able to use a local filing agent, thanks to the global expansion of financial printers and consulting firms that are knowledgeable about the Commission's EDGAR requirements.

Furthermore, many foreign filers should today experience reduced EDGAR start-up costs because they have already achieved a level of technological proficiency. These initial costs include the costs associated with hiring an information technology team or training existing employees to be technologically proficient, hiring a filing agent, hiring an Internet service provider, and preparing the documents for electronic formatting. Many foreign companies have already assembled an information technology team to present their financial and business information on their websites. These employees or agents should be familiar with HTML, which is a dominant language of the Internet. Because EDGAR now accepts documents formatted in a version of HTML as well as in ASCII,[36] this familiarity with HTML should reduce the time it takes for the information technology teams of many foreign issuers to learn the EDGAR system.

These Internet and information technology developments demonstrate that many foreign issuers already electronically format their financial and other pertinent data in some manner for public use. As a result, investors have come to expect electronic access to financial and business information about public companies, regardless of their country of origin, and to financial information about foreign governments. Because of these developments, we believe that the time is right to require foreign issuers to file their securities documents on EDGAR.

[24] The Canadian Securities Administrators require all Canadian public companies to file their securities documents electronically in PDF format on the System for Electronic Document Analysis and Retrieval (''SEDAR''). See the SEDAR National Instrument 13–101, Section 2.1, as amended September 7, 1999, of the Canadian Securities Administrators. The Internet address for SEDAR is www.sedar.com.

[25] See Instruction 202, dated December 6, 1993, of the Comissao de Valores Mobiliarios (''CVM''), Brazil's securities commission. The Internet address for Brazil's CVM is www.cvm.gov.br.

[26] See General Resolution No. 368, effective July 2, 2001, of the National Securities Commission of Argentina (''Comision Nacional de Valores'' or ''CNV''). The Internet address for Argentina's CNV is www.cnv.gov.ar.

[27] See Recommendation No. 98–05, dated March 15, 1999, of the Commission des Operations de Bourse (''COB''), the French securities commission. The Internet address of the COB is www.cob.fr.

[28] See the Ley 30/1992, which authorized the Comision Nacional del Mercado de Valores (''CNMV'') to develop an electronic filing system for securities documents. The CNMV adopted the electronic system known as CIFRADOC/CNMV in 1998. Currently, Spanish companies can only electronically submit quarterly and semi-annual reports on CIFRADOC. The Internet address of the CNMV is www.cnmv.es.

[29] See Article 194, Section 2 of the Korean Securities Exchange Act (''KSA''), and Rule 84, subsection 28 under the KSA, which authorized the electronic filing system known as ''DART.'' The Internet address of DART is http://dart.fss.or.kr. DART's website is also linked to the website of Korea's Financial Supervisory Service (''KSS''). The Internet address of the KSS is www.fss.or.kr.

[30] The electronic securities filings of public companies from Brazil, Argentina, France, Spain, and Korea are currently available through the websites of their respective securities commissions only in the home country language. In Canada, prospectuses and other documents filed on SEDAR are available generally in both French and English. The above list of foreign securities commissions that either require or permit their domestic companies to file their securities documents electronically is not exclusive.

[31] For example, the SEDAR website has links to the websites of Canada's major stock exchanges as well as to the websites of the Commission, the EDGAR system, and several non-Canadian stock exchanges.

[32] See Part III of this release for further discussion.

[33] See *Foreign Companies Registered and Reporting With the U.S. Securities and Exchange Commission December 31, 2000,* published by the Office of International Corporate Finance, Division of Corporation Finance (available May 2001) (*''Reporting Foreign Issuers List''*), which is available on our website at www.sec.gov/divisions/corpfin/internatl/companies.shtml.

[34] The IMF website is located at www.imf.org.

[35] Release No. 33–7855, text following n. 61.

[36] For the first six years of EDGAR's operation, electronic filers could only submit their securities documents in ASCII. As part of an ongoing modernization of the EDGAR system, since June 28, 1999, electronic filers have been able to submit their securities documents in either HTML or ASCII. See Release No. 33–7684 (May 17, 1999) [64 FR 27888]. As part of the second stage of EDGAR modernization, since May 30, 2000, EDGAR filers have been able to submit HTML documents that include graphic and image files and expanded use of hyperlinks. See Release No. 33–7855 (April 24, 2000) [65 FR 24788].

II. The Proposed Rule Amendments

A. Amendments to Regulation S–T Sections 100 and 601

We propose to amend Regulation S–T [37] to require that foreign private issuers [38] and foreign governments [39] file their Securities Act and Exchange Act documents with us on EDGAR.[40] Currently, Rules 100 and 601 of Regulation S–T are the provisions that exclude foreign private issuers and foreign governments from the Commission's electronic filing requirements. The proposed amendments would eliminate the foreign issuer exception primarily by revising Rules 100(a) and (c) [41] and removing Rule 601 in its entirety.

The proposed amendments would revise Rule 100(a) by removing the phrase ''except for foreign private issuers and foreign governments'' to state that Regulation S–T applies to all registrants whose filings are subject to review by the Division of Corporation Finance.[42] The proposed amendments would eliminate the phrase ''foreign private issuers and foreign governments'' in Rule 100(c) to clarify that mandated electronic filing applies to any party that files a document jointly with, or as a third party filer with respect to, a registrant that is subject to mandated electronic filing.[43] Since, if adopted, the amendments would subject foreign private issuers and foreign governments to Regulation S–T's electronic filing requirements, without regard to their joint or third party filing status, the reference to these entities in Rule 100(c) would no longer be necessary. As a result, both domestic and foreign entities would have to file on EDGAR any joint or third party filing that relates to a foreign issuer.[44]

We further propose to rescind Rule 601, which also currently codifies the foreign issuer exception from mandated EDGAR filing requirements.[45] Since the proposed amendments would extend electronic filing requirements to foreign private issuers and foreign governments, regardless of the type of transaction or filing status involved, and since we intend to program the EDGAR system and amend the EDGAR Filer Manual to provide an electronic form type for any foreign form that currently lacks one,[46] none of the Rule 601 provisions would serve any further purpose. Accordingly, we propose to eliminate this rule in its entirety.

B. Foreign Issuer Forms and Documents Affected by the Amendments

1. Securities Act Registration Statements and Exchange Act Registration Statements and Reports

As proposed, these amendments would require foreign private issuers to file electronically their Securities Act registration statements on Forms F–1, F–2, F–3, F–4,[47] and any other appropriate form,[48] absent a hardship exemption.[49] They also would mandate the filing on EDGAR of Form F–6,[50] the registration statement pertaining to depositary shares evidenced by American Depositary Receipts (''ADRs''). The proposed amendments also would require foreign private issuers to file on EDGAR their Exchange Act registration statements and annual reports on Form 20–F.[51] They would further require the electronic submission of reports on Form 6–K, the Exchange Act form used by foreign issuers to submit periodic and current reports with the Commission.

Under the proposed amendments, foreign governments would have to file on EDGAR their Securities Act registration statements on Schedule B.[52] Foreign governments would further have to file electronically their Exchange Act registration statements on Form 18 and their annual reports on Form 18–K.[53]

2. Multijurisdictional Disclosure System Forms

Under the proposed amendments, Canadian issuers that choose to use the MJDS would have to file electronically their registration statements on Forms F–7, F–8, F–9, F–10, and F–80.[54] MJDS filers would also have to file electronically their registration statements and annual reports on Form 40–F.[55] The proposed amendments would also require the filing on EDGAR of Forms 13E–4F, 14D–1F and 14D–9F,[56] the tender offer forms under the MJDS.

3. Schedules 13D and 13G and Tender Offer Schedules

The proposed amendments would further mandate the filing on EDGAR of

[37] Regulation S–T is the general regulation governing EDGAR filing. In addition to Regulation S–T, filers must submit electronic documents in accordance with the EDGAR Filing Manual.

[38] ''Foreign private issuer'' is defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–4 [17 CFR 240.3b–4].

[39] ''Foreign government'' refers to any issuer that is eligible to register securities under Schedule B of the Securities Act, including political subdivisions and some quasi-governmental entities.

[40] Regulation S–T also requires the electronic filing of any related correspondence and supplemental information pertaining to a document that is the subject of mandated EDGAR. Regulation S–T Rule 101(a)(1) [17 CFR 232.101(a)(1)]. These materials are not disseminated publicly but are available to the Commission staff. This requirement would apply to foreign issuers upon adoption of the proposed amendments.

[41] 17 CFR 232.100(c).

[42] Rule 100(a) currently provides that the electronic filing requirements of Regulation S–T apply to ''[r]egistrants whose filings are subject to review by the Division of Corporation Finance except for foreign private issuers and foreign governments.''

[43] Rule 100(c) currently provides that the electronic filing requirements of Regulation S–T apply to ''[a]ny party (including natural persons, foreign private issuers and foreign governments) that files a document jointly with, or as a third party filer with respect to a registrant that is subject to mandated electronic filing requirements.'' For example, a foreign issuer named as a guarantor and co-registrant on a registration statement that pertains to a domestic issuer must currently file the registration statement and related documents on EDGAR.

[44] See Part II.B.3 below.

[45] Rule 601(a) excepts foreign private issuers and foreign governments from the mandated EDGAR filing rules unless the foreign issuer is filing a document jointly with, or with respect to, a party that is the subject of mandated electronic filing. Rule 601(b) [17 CFR 232.601(b)] provides that a foreign private issuer or foreign government may choose to file electronically any document not required to be filed under Regulation S–T as long as the EDGAR Filer Manual contains an appropriate electronic form type. Rule 601(c) [17 CFR 232.601(c)] provides that if a foreign private issuer engages in an exchange offer, merger or other business combination with a domestic registrant, and the foreign private issuer files a Securities Act registration statement regarding this transaction, the foreign private issuer may file this registration statement in paper as long as the domestic registrant will not be subject to Exchange Act reporting requirements following the transaction.

[46] We intend to provide electronic form types for the MJDS forms used by qualifying Canadian filers as well as other forms, such as the Schedule B registration statement used by foreign governments, and reports filed by supranational entities under 17 CFR 285 through 290, that currently lack an electronic form type.

[47] 17 CFR 239.31, 239.32, 239.33 and 239.34.

[48] Foreign persons may also register securities on Forms S–8 [17 CFR 239.16b] and S–11 [17 CFR 239.18] as well as on other registration statement forms normally used by U.S. issuers.

[49] See the discussion in Part II.B.8 below on the limited availability of hardship exemptions under Regulation S–T.

[50] Because Regulation S–T Rule 101(c)(15) [17 CFR 232.101(c)(15)] currently lists Form F–6 as a form to be filed in paper only, the proposed amendments would remove this provision and renumber the remaining provisions in Rule 101(c) accordingly.

[51] We also propose a minor modification to Form 20–F. The second paragraph of General Instruction D of Form 20–F instructs registrants on how to file the Form 20–F on paper. It further states that while we do not require foreign private issuers to file registration statements and reports electronically, we encourage them to do so. We propose to remove this instruction.

[52] 15 U.S.C. 77a *et seq.*, Schedule B.

[53] 17 CFR 249.218 and 249.318.

[54] We are also proposing some minor modifications to these MJDS forms to clarify that all of a registration statement submitted under cover of one of these forms must be in the English language. See Part II.C.3 below.

[55] 17 CFR 249.240f.

[56] 17 CFR 240.13e–102, 240.14d–102, and 240.14d–103.

third party forms, whether filed by a domestic or foreign company, that pertain to a foreign private issuer, since a third party filer would no longer be able to claim an EDGAR exemption based on the underlying EDGAR exemption for foreign private issuers. Thus, a domestic or foreign person would have to file on EDGAR its Schedule 13D [57] or 13G [58] that pertains to the securities of a foreign private issuer. Similarly, a domestic as well as a foreign bidder would have to file its Schedule TO [59] with respect to a tender offer for securities of a foreign private issuer. A foreign private issuer that is subject to a tender offer by a domestic or foreign company would have to file its Schedule 14D–9 [60] on EDGAR.

4. Form CB

The proposed amendments would require under certain circumstances the electronic filing of one exemptive form—Form CB.[61] Both foreign and domestic persons must file Form CB when engaging in specified rights offerings, exchange offers or business combinations with respect to a foreign private issuer.[62] We propose to require the filing of Form CB on EDGAR in two instances.[63] First, if the foreign or domestic company filing the form is an Exchange Act reporting company, and thus already a mandated EDGAR filer, it must file Form CB on EDGAR. In this instance, because the bidder or acquiror is already familiar with EDGAR requirements, requiring it to file its Form CB on EDGAR should not pose an undue burden.

Second, we propose to require the filing of Form CB on EDGAR if the foreign company that is the subject of a transaction covered by a Form CB is an Exchange Act reporting company even if the acquiror is not. In this instance, the subject foreign company will be a mandated EDGAR filer. Investors will therefore expect to have electronic access to all filings about the reporting foreign company, including a Form CB for which it is the subject company. This public interest warrants requiring the filing of a Form CB on EDGAR. Of course, the proposed amendment would permit the voluntary electronic filing of Form CB even when not required.[64] A company that electronically files a Form CB would have to file on EDGAR the home jurisdiction documents that are attached to the Form CB as well.[65]

We also propose to amend the cover page of Form CB to require a filer to indicate whether it is filing the Form CB in paper as permitted by the proposed rule. This would facilitate the proper processing of Form CB by Commission staff.

In some instances the company that is the subject of a Form CB transaction undertakes to furnish the Form CB along with all required home country materials instead of the bidder or offeror. In those instances, under our proposed amendment, if the bidder or offeror was an Exchange Act reporting company, the subject company would still have to file the Form CB and all required materials on EDGAR even though it was a non-reporting company. Similarly, if the bidder or offeror was a non-Exchange Act reporting company, and the subject company was an Exchange Act reporting company, the proposed amendment would mandate the filing of the Form CB on EDGAR whether filed by the bidder/offeror or subject company.

There also may occur instances involving competing bidders for the securities of a non-reporting subject company when one bidder is an Exchange Act reporting company and the other is a non-reporting company. Under the proposed amendment, if each bidder files a Form CB, the Exchange Act reporting company would have to file its Form CB on EDGAR while the non-reporting company could file its Form CB on paper.

5. Forms F–X and F–N

We also propose to require that foreign private issuers file electronically two auxiliary forms, Forms F–X and F–N. Form F–X is the form for designating a U.S. agent for service of process that is required for a MJDS filer and specified other foreign filers.[66] Form F–N is the form for designating a U.S. agent for service of process by foreign banks and foreign insurance companies when they file registration statements under the Securities Act.[67]

There are two exceptions to the electronic filing requirement proposed for Form F–X.[68] The first pertains to those foreign issuers that must file Form F–X because they are Form CB filers. Since the proposed amendments only require the filing of Form CBs on EDGAR when the filer or the company that is the subject of a Form CB transaction is an Exchange Act reporting company, we propose the same approach for the Form F–X required to be filed by a foreign company along with a Form CB. The proposed amendments permit, but do not require, the filing of Form F–X on EDGAR if neither the filer nor the Form CB subject company is an Exchange Act reporting company.[69]

The second Form F–X exception pertains to the requirement that a Canadian issuer submit a Form F–X when qualifying an offering statement pursuant to the provisions of Regulation A.[70] Because Regulation S–T currently requires the submission of Regulation A filings in paper only, the proposed amendments would permit a Canadian Regulation A filer to submit the required Form F–X in paper.[71]

As with Form CB, we would amend Form F–X to require the filer to indicate whether it is filing the Form F–X in paper as permitted by the proposed rule. This would facilitate the proper processing of the Form F–X by Commission staff.

6. Exhibits

The proposed amendments would afford to foreign filers the same treatment given to domestic filers regarding exhibits under Rule 102 of

[57] 17 CFR 240.13d–101.

[58] 17 CFR 240.13d–102.

[59] 17 CFR 240.14d–100.

[60] 17 CFR 240.14d–101.

[61] Similar to our treatment of Form 6–K reports (see Form 6–K General Instruction B), our rules currently treat information and documents furnished under Form CB as not ''filed'' with the Commission or otherwise subject to the liabilities of Exchange Act Section 18 [15 U.S.C. 78r]. See Form CB General Instructions I(B). The proposed amendments would not alter this treatment.

[62] See Securities Act Rules 801(a)(4) and 802(a)(3) [17 CFR 230.801(a)(4) and 230.802(a)(3)] and Exchange Act Rules 13e–4(h)(8)(iii), 14d–1(c)(3)(iii), and 14e–2(d) [17 CFR 240.13e–4(h)(8)(iii), 240.14d–1(c)(3)(iii), and 240.14e–2(d)].

[63] Proposed Rule 101(a)(vi).

[64] Proposed Rule 101(b)(7). A non-reporting company could continue to file a Form CB in paper when the subject company to which the Form CB relates is not a reporting company.

[65] An electronic filer would have to comply with Regulation S–T Rule 306, which governs the treatment of foreign language documents in the EDGAR system. See Part II.C below for a discussion of proposed amendments to Rule 306.

[66] In addition to a MJDS filer, the following persons must file a Form F–X: a non-U.S. person filing tender offer docments on Schedule 13E–4F, 14D–1F, or 14D–9F; a foreign trustee regarding securities registered on a MJDS Securities Act registration statement; a Canadian issuer filing an offering statement under Regulation A [17 CFR 230.251–230.263] or a Form SB–2 registration [17 CFR 239.10]; and a foreign issuer or other non-U.S. person filing Form CB in connection with a tender offer, rights, offering or business combination. See 17 CFR 239.42(d), (e), (f), and (g). In addition, under the Trust Indenture Act, specified Canadian trust companies acting as trustees under an indenture qualified or to be qualifed under the Trust Indenture Act must file a Form F–X with the Commission. Trust Indenture Act Rule 260.10A–5(b) [17 CFR 260.10a–5(b)].

[67] Securities Act Rule 489 [17 CFR 230.489] requires the filing of Form F–N.

[68] Proposed Rule 101(a)(vii) and 101(b)(8) old Regulation S–T.

[69] The same reasons that support requiring the filing of Form CB on EDGAR in these instances also support requiring the filing of the accompanying Form F–X in these instances.

[70] 17 CFR 239.42(f) and 17 CFR 230.263(a).

[71] Proposed Rule 101(a)(viii) of Regulation S–T.

Regulation S–T.[72]. We currently do not require a domestic filer to file electronically an exhibit previously filed in paper that is being incorporated by reference into the electronically filed document. As under the current rules, a foreign filer could voluntarily refile the exhibit on EDGAR.[73] Upon amending its articles of incorporation or bylaws, a foreign filer would have to restate these documents in electronic format.[74]

The proposed amendments would permit, but not require, a foreign issuer to submit electronically its annual report to security holders on a Form 6–K.[75] This comports with our current treatment of ''glossy'' annual reports furnished by domestic companies for the information of the Commission pursuant to Exchange Act Rule 14a–3(c)[76] or 14c–3(b)[77] or the requirements of Form 10–K or 10–KSB [78] under Exchange Act Section 15(d).[79] A foreign issuer would be able to submit in paper both its Form 6–K and its annual report to security holders attached as an exhibit as long as the sole purpose of the Form 6–K was to provide a copy of this report. If the Form 6–K reported other information in addition to attaching the annual report to security holders, the foreign issuer would have to submit the Form 6–K on EDGAR together with all exhibits, including the annual report to security holders exhibit.

We would amend the cover page of Form 6–K to require the foreign issuer to indicate that it is submitting the Form 6–K in paper solely to provide an attached copy of its annual report to security holders as permitted by proposed Regulation S–T Rule 101(b)(1). This proposed amendment would facilitate the proper processing of the form by Commission staff. We would also add an instruction to Form 6–K regarding the limited circumstances that would permit the filing of the Form 6–K in paper.[80]

Finally, we propose to amend Rule 303(b)[81] of Regulation S–T to provide that if a foreign issuer incorporates by reference into any electronic filing any portion of an annual or other report to security holders, it must file the portion of the annual or other report to security holders in electronic format as an exhibit to the filing. Again, this comports with the treatment afforded to domestic companies.[82]

7. Trust Indenture Act Forms

Regulation S–T currently requires the filing on EDGAR of statements and applications regarding trustee eligibility and indenture qualification [83] under the Trust Indenture Act.[84] The proposed amendments would require the filing on EDGAR of

- Forms T–1 and T–2 [85] statements of trustee eligibility if submitted in connection with an indenture for which a foreign issuer is the obligor;
- Form T–3 [86] to qualify an indenture covering a foreign issuer's securities sold in offerings that are exempt from registration under the Securities Act; [87] and
- Form T–6 [88] used by foreign corporations and other foreign business entities to obtain authorization to act as a sole trustee under an indenture qualified or to be qualified under the Trust Indenture Act.

8. Hardship Exemptions

The proposed amendments do not alter the provisions governing the availability of hardship exemptions under Regulation S–T. A foreign issuer that meets the requirements of Section 201 or 202 of Regulation S–T [89] may obtain a temporary or continuing hardship exemption from the EDGAR filing requirements.[90] As is the case with domestic filers, we expect to grant hardship exemptions for foreign issuers infrequently.[91] Moreover, as is the case with domestic filers, our filing desk will not accept in paper format any filing submitted by a foreign issuer that must be filed electronically pursuant to Regulation S–T Items 100 and 101 unless the filing satisfies the requirements for a temporary or continuing hardship exemption under Regulation S–T.[92]

9. Comment Solicited

We solicit comment on the scope of the proposed amendments. Here and throughout the release, when we solict comment, we are interested in hearing from all interested parties, including members of the investing public, filers and members of the financial community. We are further interested in learning from all parties what aspects of the rule proposals they deem essential, what aspects they believe are preferred but not essential, and what aspects they believe should be modified.

Should we include both foreign private issuers and foreign governments in the mandated EDGAR regime, as proposed? Or should we continue to allow foreign governments to file their Schedule B registration statements and Exchange Act documents in paper? If we extend the electronic filing requirements to both foreign private issuers and foreign governments, are there some foreign issuer forms or documents that in whole or in part should be exempt from these requirements? [93]

Should we require, rather than permit as proposed, the submission on EDGAR of a Form 6–K used solely to provide a foreign issuer's annual report to security holders? When a foreign issuer uses a Form 6–K to provide its annual report to security holders as well as to disclose additional information, should we permit the foreign issuer to submit its annual report exhibit in paper rather than require it to submit this exhibit

[72] 17 CFR 232.102.

[73] Rule 102(a) of the Regulations S–T [17 CFR 232.102(a)].

[74] This is consistent with the treatment of domestic issuers. Regulation S–T Rule 102(c) [17 CFR 232.102(c)].

[75] Proposed amendment to Regulations S–T Rule 101(b)(1) [17 CFR 232.101(b)(1)]. The proposed amendment also applies to MJDS filers.

[76] 17 CFR 240.14a–3(c).

[77] 17 CFR 240.14c–3(b).

[78] 17 CFR 249.310 and 310.b.

[79] 15 U.S.C. 78o. See, example, Form 10–K, the section following ''Signatures'' entitled ''Supplemental Information to be Furnished with Reports Pursuant to Section 15(d) of the Act * * *''

[80] See proposed General Instruction D to the Form 6–K.

[81] 17 CFR 232.303(b).

[82] See the current version of Regulation S–T Rule 303(b) and Note 2 of General Instruction G to the Form 10–K annual report.

[83] Regulation S–T Rule 101(a)(1)(ii) [17 CFR 232.101(a)(1)(ii)].

[84] 15 U.S.C. 77aaa *et seq.* In contrast, Regulation S–T Rule 101(c)(5) [17 CFR 232.101(c)(5)] currently requires the filing on paper of of applications for exemptive relief pursuant to section 304 and 310 of the Trust indenture Act [15 U.S.C. 77ddd abd 77jjj, respectively]. This provision applies to both domestic and foreign filers and would remain the same under our proposed amendments.

[85] 17 CFR 269.1 and 269.2.

[86] 17 CFR 269.3.

[87] Rule a–1 [17 CFR 260.7a–1] under Trust Indenture Act Section 307(a) [15 U.S.C. 77ggg] authorizes the use of Form T–3.

[88] 17 CFR 269.9.

[89] 17 CFR 232.201 or 232.202. An EDGAR filer may obtain a temporary hardship exemption if it experience unanticipated technical difficulties that prevent thetimely preparation and submission of an electronic filing. See 17 CFR 232.201(a). An EDGAR filer may apply for a continuing hardship exemption if it cannot file all of part of diling without undue or expense. See 17 CFR 232.202(a).

[90] A filer obtains a temporary hardship exemption by filing a properly legended paper copy of the filing under cover of Form TH pursuant to Regulation S–T Rule 201. In contrast to this self-executing process, a filer can only obtained exemption by submitting a written application pursuant to Regulation S–T Rule 202, upon which the Commission staff must then act pursuant to delegated authoritry.

[91] In addition to pursuing a hardship exemption, a filer that has in good faith attempted to submnit a filing in a timely manner but has experienced a delay due to technical conditions beyond its control request a filing date adjustment pursuant to Regulation S–T Rule 13(b) [17 CFR 232.13(b)].

[92] Rule 14 of Regulation S–T [17 CFR 232.14].

[93] See, for example, Part C below for a discussion of and comment solicited about our current and proposed treatment of a foreign government's annual budget exhibit to Forms 18 and 18–K.

electronically, as proposed? [94] Are there other exhibits to or parts of a Form 6–K or other document filed by a foreign issuer that we should permit, but not require, to be submitted electronically? For example, many foreign companies submit under cover of Form 6–K heavily formatted, statutory reports to their home country securities regulators. The proposed amendments would require the submission of these statutory reports in electronic format. We understand that many foreign companies are already preparing these statutory reports electronically. How widespread is this practice? Should we permit, but not require, the electronic submission of these statutory reports? Are investors interested in gaining electronic access to exhibits attached to a Form 6–K?

Should we include all Form F–6s in the mandated EDGAR system, as proposed? For example, should we require the electronic filing of a Form F–6 even when the foreign private issuer whose securities underlie the ADRs that are the subject of the Form F–6 is not an Exchange Act reporting company and has only filed paper documents with the Commission pursuant to the Exchange Act Rule 12g3–2(b) exemption? [95]

Should we require the electronic filing of all of the MJDS forms, as proposed? Are there parts of or exhibits to any of the MJDS forms that we should treat as permitted but not required items to be filed on EDGAR? If the applicable Canadian securities administrator has permitted the filing in paper of an exhibit in Canada, should we also permit the filing of this exhibit in paper if submitted as part of a MJDS filing?

Instead of permitting some Form CBs to be filed in paper, as proposed, are there compelling reasons to require the electronic filing of all Form CBs, even those that are filed by non-Exchange Act reporting companies regarding transactions with other non-Exchange Act reporting companies? What are the costs and burdens that a non-Exchange Act reporting company would incur if we required it to file a Form CB on EDGAR? Are there any Form CB transactions where the costs of filing electronically would not be justified?

Should we require, as proposed, the filing on EDGAR of a Form CB that pertains to a transaction with a foreign private issuer that is an Exchange Act reporting company even when the filer is a non-Exchange Act reporting company? In a competitive bidding situation for the securities of a non-Exchange Act reporting company, should we require a bidder that is an Exchange Act reporting company to file the Form CB on EDGAR, as proposed, even though a non-reporting bidder could file its Form CB on paper? Would any of the above proposed requirements discourage the use of the Form CB and the extension of offers to U.S. persons pursuant to the exemptive Securities Act and tender offer rules?

Should we require the filing on EDGAR of all Trust Indenture Act forms submitted in connection with an indenture under which a foreign private issuer is an obligor? For example, should we make an exception for filers of Form T–3 that pertain to debt securities not required to be registered under the Securities Act if the foreign issuer is not an Exchange Act reporting company? [96]

C. Electronic Filing Hours

EDGAR filers that submit their documents to the Commission by direct transmission, either through the Internet or by dial-up modem, can take advantage of longer filing hours than those provided for paper filers or issuers filing by magnetic cartridge. The Commission accepts EDGAR filings by direct transmission from 8 a.m. until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect, every day except for Saturdays, Sundays and federal holidays.[97] In contrast, paper and magnetic cartridge filings must be submitted by 5:30 p.m.[98] Most EDGAR filings submitted by direct transmission after 5:30 p.m. receive the next day's date as the official date of filing.[99]

We are not currently proposing to change the Commission's filing hours for electronic filings made by direct transmission. Foreign issuers currently filing electronically generally do not appear to have difficulty making filings in a timely fashion. In many cases, they use filing agents based in the United States to submit their filings.

Nevertheless, we request comment on whether the current EDGAR filing hours could prove to be an undue burden on foreign companies, some of whose business hours overlap minimally, or do not overlap at all, with the EDGAR filing hours. We invite comment on the extent to which extending the EDGAR filing hours, if it proved feasible, would assist foreign or domestic filers in different time zones in complying with their electronic filing obligations. We also request data to quantify both the burden imposed by the current EDGAR filing hours and the value of extending these hours for foreign and domestic issuers operating in different time zones.

D. Treatment of Foreign Language Documents

Under our current rules, with one significant difference, both EDGAR and paper filers must file their Securities Act and Exchange Act registration statements and Exchange Act reports in the English language.[100] This substantially similar treatment ensures that investors in the United States, as well as Commission staff and members of the U.S. financial community, will be able to understand the securities documents of any issuer that offers to sell registered securities in or otherwise seeks to avail itself of the U.S. capital markets.

The one significant difference between the EDGAR and paper filing rules regarding the use of foreign language documents is that Regulation S–T Rule 306 forbids the filing on EDGAR of any foreign language document without exception. In contrast, the corresponding paper filing rules permit the filing of a foreign language document as an exhibit to or other part of a registration statement or report as long as the foreign language document is accompanied by a ''summary, version or translation in the English language.'' For the reasons discussed below, we propose to amend the paper filing rules to conform to Regulation S–T Rule 306. We also propose minor modifications to Rule 306.

1. Treatment Under Rule 306, the Electronic Filing Rule

Regulation S–T Rule 306 broadly prohibits the filing of foreign language documents in electronic format. Thus, under Rule 306, the body of a registration statement, prospectus, schedule or report as well as exhibits or other documents filed with the

[94] If so, we would have to amend Form SE (17 CFR 239.64, 249.444, 259.603, 269.8 and 274.403), the form used by electronic filers to submit in paper documents specified in Rule 311 of Regulation S–T, to provide for its use specifically for this purpose.

[95] 17 CFR 240.12g3–2(b). As explained below, both currently and under the proposed rule amendments, a foreign private issuer may submit only on paper an application and supporting materials pursuant to Exchange Act Rule 12g3–2(b).

[96] See Trust Indenture Act Section 307(a) and Trust Indenture Act Rule 7a–1.

[97] Regulation S–T Rule 12(c) [17 CFR 232.12(c)].

[98] Regulation S–T Rule 12(b) [17 CFR 232.12(b)].

[99] Regulation S–T Rule 13(a)(2) [17 CFR 232.13(a)(2)]. The one exception pertains to filings made pursuant to Securities Act Rule 462(b) [17 CFR 230.462(b)], which automatically become effective upon filing. If made between 5:30 p.m. and 10 p.m., these Rule 462(b) filings are deemed filed on the same business day. See Regulation S–T Rule 13(a)(3) [17 CFR 232.13(a)(3)].

[100] See Regulation S–T Rule 306, Securities Act Rule 403(c) [17 CFR 230.403(c)] and Exchange Act Rule 12b–12(d) [17 CFR 240.12b–12(d)].

registration statement, prospectus, schedule or report must all be in the English language. If a required document is in a foreign language, a company or other party must file instead on EDGAR a fair and accurate English translation of the foreign language document.[101] Filers must also include in each English language translation a written representation signed by a designated officer that the English version document is a fair and accurate representation of the foreign language document.

The proposed amendments would not substantively alter our current treatment of foreign language documents under Rule 306. Its English translation requirement ensures that most investors and other interested parties in the U.S. market will be able to read all material information about a filing foreign issuer. Since investor understanding is a prerequisite to the development of a market for a foreign issuer's securities in the United States, a foreign issuer benefits by translating into English all of its securities documents, including exhibits, filed with the Commission. Our treatment of foreign language documents also reflects the practical limitations of the EDGAR software, which currently only recognizes a limited number of foreign language symbols and characters.[102]

We propose, however, to make minor revisions to Rule 306, for example, to clarify that all electronic submissions [103] as well as filings must be in the English language. This proposed language reflects the fact that, under our current rules, some forms, such as Form 6–K and Form CB, are not deemed filed with the Commission for the purpose of Exchange Act Section 18. A party must nevertheless electronically submit these forms and accompanying documents in the English language.

The proposed amendments would also correct a discrepancy between current Rule 306 and Form 18–K's annual budget exhibit requirement imposed on foreign governments. Form 18–K instructs a foreign government to provide a copy of its latest annual budget while explicitly informing the filer that it need not provide a corresponding English translation.[104] Thus, when filing Form 18–K in paper, a foreign government may satisfy this instruction by providing a copy of the foreign language version of its latest annual budget. In contrast, if filing Form 18–K electronically, under the current version of Rule 306, a foreign government cannot file in electronic format the foreign language version of its latest annual budget. Yet, as an electronic filer, it also cannot submit a copy of the foreign language version in paper because Form SE, which is the form used by electronic filers to submit a document in paper, does not currently allow for this use.[105] Rule 306 provides instead that if no English translation of the budget is available, it need not be filed at all.[106]

Consequently, under the current rules, a foreign government that has not prepared an English translation of its latest annual budget need not submit its annual budget as an exhibit on EDGAR, and cannot submit it in paper, despite the requirements of Form 18–K. In order to correct this anomaly, we propose to amend Rule 306 to require a foreign government or political subdivision to file its latest annual budget in a foreign language in paper under cover of Form SE if no English translation is available.[107] We further propose to amend Rule 311 to allow the use of Form SE specifically for this purpose.[108]

2. Elimination of the Summary Option Under Rules 403(c) and 12b–12(d), the Rules for Paper Filings Submitted Under a Hardship Exemption or Rule 101 of Regulation S–T

After adoption of our proposed mandated EDGAR regime for foreign issuers, a filer could only submit documents in paper to the Commission pursuant to a hardship exemption under Regulation S–T Rules 201 or 202 or in the limited circumstances recognized by Rule 101(b) or (c).[109] In these few instances a filer would have to abide by Securities Act Rule 403(c) or Exchange Act Rule 12b–12(d), the rules governing the treatment of foreign language documents for paper filings. Unlike Regulation S–T Rule 306, these rules permit a filer to submit a foreign language document as an exhibit or other part of the filing, but not in the body of the filing, as long as it is accompanied by a ''summary, version or translation in the English language.'' We propose to amend Securities Act Rule 403(c) and Exchange Act Rule 12b–12(d) to eliminate the reference to an English language summary or version for the following reasons.[110]

First, the primary reason for mandating the English language translation of foreign language documents that must be filed electronically—ensuring investor understanding of the foreign issuer in the United States—also compels requiring the translation in English of exhibits and other documents filed with the Commission in paper.[111] Elimination of the ''English summary'' option would also reflect the staff's experience that many of the summaries submitted have been too brief and too general. Adoption of the same ''English translation'' standard for all filed documents also would ensure that electronic filers, which will constitute the vast majority of filers, will not be treated more stringently than paper filers. Moreover, elimination of the reference to ''version'' would remove a term that is vague and confusing.

Further supporting the elimination of the ''English summary or version'' option for paper filers is the fact that the option has limited practical utility. In practice, the Commission staff has interpreted the paper filing rules restrictively to permit English summaries or versions only in some circumstances. For example, the staff has typically not permitted summaries or versions of exhibits that, in the staff's view, are too important to present in an abridged fashion. These exhibits include articles of incorporation, whether original or restated, memoranda of association, bylaws, instruments defining the rights of security holders, voting agreements, and exhibits

[101] Rule 306(a) [17 CFR 232.306(a)].

[102] For this reason, Rule 306(b) [17 CFR 232.306(b)] requires an electronic filer to express foreign currency denominations in words or letters rather than representative symbols unless the electronic filing is in HTML. In that case, the EDGAR filing may include any representative foreign currency symbol specified in the EDGAR Filer Manual. The proposed amendments would leave this provision intact.

[103] Regulation S–T Rule 11 (17 CFR 232.11) defines ''electronic submission'' as any document, such as a filing or correspondence, or series of documents transmitted or delivered to the Commission in electronic format.

[104] Form 18–K, Exhibit Instructions, paragraph (c). This reflects concerns that the typically lengthy annual budget could be costly to translate.

[105] *See* Regulation S–T Rule 311.

[106] *See* the Note to Regulation S–T Rule 306(a). As provided in this Note, the Commission staff currently reserves the right to review a copy of the annual budget upon request.

[107] Proposed Rule 306(b).

[108] Proposed Rule 311(f).

[109] For example, under the proposed amendment to Rule 101(b), a foreign issuer could submit in paper its annual report to security holders attached to a Form 6–K. A filer could also submit a Form CB in paper if neither company involved was an Exchange Act reporting company.

[110] Foreign issuers that currently file in paper will not be able to submit a summary of a foreign language document following adoption of our proposed amendments since, as mandated EDGAR filers, they will be subject to Regulation S–T Rule 306, which requires an English translation of an entire foreign language document.

[111] For this reason, we currently require Form CB filers to submit English translations of all attached home country documents required to be sent to U.S. security holders or published in the United States. The proposed amendments would continue this requirement whether the Form CB is filed electronically or in paper.

containing financial statements. This list comprises most of the exhibits required for a Form 20–F registration statement or annual report.

Current Commission staff practice also precludes the summarizing of a material contract exhibit or other document for which a filer is seeking confidential treatment in whole or part pursuant to Rule 83 of the Commission's rules concerning information and requests,[112] Securities Act Rule 406[113] or Exchange Act Rule 24b–2.[114] Regulation S–T requires the submission of all confidential treatment requests and supporting documents to be in paper only.[115] The staff does not permit a confidential treatment applicant to submit in paper an English summary or version of a foreign language exhibit that is the subject of the confidential treatment request. A line by line translation of the entire document is necessary to enable the Commission's staff to determine whether to grant the filer's confidential treatment request. A filer cannot submit a summary or abridged version of a foreign language document that is the subject of a confidential treatment request either as a substitute for the publicly filed, redacted version or the confidentially submitted, unredacted version.[116]

In addition to eliminating the reference to an English ''summary'' or ''version,'' the proposed amendments would adopt the written representation requirement of Regulation S–T Rule 306 for paper filings. Both amended Securities Act Rule 403(c) and Exchange Act Rule 12b–12(d) would require a paper filer to include in any submitted English translation of a foreign language document a written representation, signed by the paper filer's designated officer or official, that the submission was a fair and accurate translation of the foreign language document. This written representation requirement should help to ensure the accuracy of any translated document filed in paper.

The proposed amendment of Exchange Act Rule 12b–12(d) also would adopt the ''annual budget'' exception of Regulation S–T Rule 306 for paper filings. A foreign government filing a Form 18 or 18–K would have to submit an English translation of its latest annual budget only if one were available. If a foreign government lacked an available English translation, it would have to file a paper copy of the foreign language version of its latest annual budget.[117]

3. Foreign Language Instructions on Form 6–K and MJDS Forms

We also propose a conforming amendment to Form 6–K's General Instruction D, which pertains to English translation requirements for documents submitted under cover of Form 6–K. The first paragraph currently provides that, pursuant to Exchange Act Rule 12b–12(d), a filer must provide an English translation, version or summary of press releases, communications or other materials distributed to holders of securities for which a filer has reporting obligations under the Exchange Act and which it must furnish under cover of Form 6–K. The second paragraph then provides that a filer need not furnish any other documents, including offering circulars relating solely to foreign offerings, unless it has prepared an English translation, version or summary. This paragraph further instructs that if the filer has not prepared an English translation, version or summary, it can submit a brief description of the document although there is no requirement to submit a copy of the original language document.

In light of the proposed amendments to Rule 306, and in an attempt to achieve uniformity in the treatment of foreign language documents, we propose to remove most of General Instruction D. We would replace it with the instruction that, under Regulation S–T Rule 306, an electronic filer must provide an English translation of any foreign language document that is the subject of the Form 6–K report. The instruction would then refer filers that are filing on paper under a hardship exemption to the similar requirements of Exchange Act Rule 12b–12(d).

We further propose to amend an instruction regarding foreign language documents that currently appears on all of the Securities Act registration statements under the MJDS. This instruction currently states that if any part of the MJDS prospectus is in a language other than English, the MJDS filer must submit an English translation along with the prospectus. The instruction also requires a MJDS filer to submit an English translation or summary of any foreign language exhibit, paper or other document filed as part of a MJDS registration statement or amendment.[118]

We initially adopted this instruction to accommodate Canadian filers such as Quebec companies that wished to publish parts of their Canadian prospectuses or exhibits in French. However, this instruction has rarely been used if at all. Moreover, in light of our proposed inclusion of MJDS forms in mandated EDGAR, and our proposed amendment of Rule 306, we propose to amend this MJDS instruction as follows.

First, the proposed revised instruction would state that an electronic filer may only submit the registration statement in the English language pursuant to Regulation S–T Rule 306. If any part of the body of the Canadian registration statement is in a language other than English, the filer must provide an English translation instead of the foreign language version when filing the MJDS document with the Commission in electronic format. The proposed amended instruction would further provide that

- If an electronic filer wishes to submit a foreign language exhibit or other supplementary document with the registration statement, it must instead provide an English translation of the exhibit or other document as required by Regulation S–T Rule 306; and
- if filing the registration statement in paper under a hardship exemption under Regulation S–T Rules 201 or 202 or as otherwise permitted by the Commission, a filer must file a registration statement that complies with Securities Act Rule 403(c).

4. Comment Solicited

We solicit comment on our proposed amendments to Regulation S-T Rules 306 and 311 and Securities Act Rule 403(c) and Exchange Act Rule 12b–12(d) as well as to the foreign language instruction to the MJDS forms and to Form 6–K. Should we preclude filers from providing English summaries or versions of foreign language exhibits, as proposed? What are the costs expected to affect a foreign issuer as a result of our elimination of the summary option? Because of these expected costs, should we continue to permit paper filers to provide English summaries of specified exhibits? If so, what exhibits are appropriate subjects to be summarized and why? Are there some exhibits that are too important to be summarized? If so, what are they?

Are there conditions that would render a summary a suitable substitute

[112] 17 CFR 200.83.

[113] 17 CFR 230.406.

[114] 17 CFR 240.24b–2.

[115] Rule 101(c)(1)(i) [17 CFR 232.101(c)(1)(i)].

[116] See revised Staff Legal Bulletin No. 1, dated July 11, 2001, published by the Division of Corporation Finance, at Section II(D)(3), which is available at www.sec.gov/interps/legal/slbf1r.htm.

[117] This provision is consistent with proposed Rule 306(b). The proposed amendment of Exchange Act Rule 12b–12(d) would also refer both to filings and submissions, similar to proposed Rule 306(a).

[118] See Form F–7, General Instruction, II.G; Form F–8, General Instruction IV.I; Form F–9 General Instruction II.I; Form F–10, General Instruction II.J; and Form F–80, General Instruction IV. I.

for an unabridged version? For example, should we permit a filer to provide a summary if it could not obtain a fair and accurate English translation without undue effort and expense? Do foreign filers have difficulty finding competent translation services? Are there other conditions that would render the filing of a summary proper? Should we amend Regulation S–T Rule 306 to allow electronic filers to submit English summaries of specified exhibits? If so, should we also amend Form SE to enable filers to submit a paper copy of a foreign language document when electronically filing an English summary of that document? Or is the summary of a foreign language document of limited practical utility for most U.S. investors? Should any rule permitting the use of a summary provide specific guidance as to when a summary is or is not acceptable? What guidance would be useful?

Should we require a foreign government filing electronically to submit the foreign language version of its latest annual budget in paper under cover of Form SE if no English translation is available, as proposed? Or should we continue to permit a foreign government filing electronically to omit its latest annual budget exhibit to its Form 18 or 18–K if no English translation is available? Conversely, should we require an English translation of the budget or of its material features?

Should we adopt the same requirements governing the treatment of foreign language documents for filers filing electronically and those filing in paper as proposed? In particular, should we adopt for paper filers Rule 306's requirement that a designated official of the filer attest in writing to the accuracy of an English translation of an exhibit? Should we eliminate the written representation requirement for both electronic and paper filers? Do the antifraud provisions of the federal securities laws afford investors sufficient protection from and deter the making of material misrepresentations or omissions concerning English translations of foreign language documents?

Regarding our proposed revisions to the MJDS ''foreign language'' instruction, should we require that MJDS electronic filers abide by amended Rule 306, as proposed? Or are there any circumstances that would justify exempting a MJDS filer from the English translation requirement and allowing the submission of an English summary instead? Similarly, are there circumstances that we should specify on Form 6–K that would permit the use of an English summary instead of a translation?

E. Amendment To Require Electronic Filing Instruction for Schedule B Registrants That Are Incorporating by Reference

Forms F–2, F–3 and F–4 [119] and their domestic counterparts, Forms S–2, S–3 and S–4 [120] enable qualified registrants to incorporate by reference Exchange Act reports as well as exhibits and amendments to these reports into their registration statements. Each of these forms requires a registrant to identify the report being incorporated by reference and to state that, upon the request of any person that has received a prospectus, the registrant will provide a copy of any information incorporated by reference that has not been delivered with the prospectus. In conjunction with these requirements, each of these forms bears an ''electronic filing'' instruction that requires a registrant to disclose in a prospectus information concerning the electronic availability of a registrant's reports and other information on the Commission's website. A registrant is further encouraged to give its own Internet address, if available.[121]

A foreign government or political subdivision may also incorporate by reference its Form 18–K annual report and any exhibit or subsequent amendment to this report into a Schedule B registration statement if, upon application to the Division of Corporation Finance, the Division does not object to this incorporation by reference. Because there is no form for a Schedule B registration statement, Division staff has outlined procedures for a Schedule B filer that seeks to incorporate by reference.[122] These procedures are substantially similar to the requirements established for domestic and foreign private issuers that seek to incorporate by reference.[123]

Currently there is no substantially similar ''electronic filing'' instruction for a Schedule B registration statement. We propose to amend Securities Act Rule 493 to require that a foreign government intending to incorporate by reference its Form 18–K annual report provide the following information in its electronically filed Schedule B registration statement:

- The foreign filer must state that the SEC maintains an Internet site that contains reports, statements and other information regarding issuers that file electronically with the SEC; and
- The foreign filer must disclose the address for the SEC Internet site at (http://www.sec.gov).

The instruction would also encourage the foreign filer to provide its own Internet address, if available.[124]

The proposed rule would also state that a foreign government must file its Schedule B registration statement on EDGAR unless it has obtained a hardship exemption pursuant to Regulation S–T Rule 201 or 202.[125] Since foreign governments have thus far only filed their Schedule B registration statements in paper, we believe that this provision is a useful reminder of their new EDGAR filing status.

F. Treatment of Supranational Entities' Reports

Regulation S–T currently permits, but does not require, the International Bank for Reconstruction and Development (''World Bank'') to file on EDGAR its annual and periodic reports and its reports concerning proposed distributions of its primary obligations that the World Bank must submit to the Commission.[126] The proposed amendments do not alter the voluntary electronic filing treatment of this supranational entity. However, we propose to amend Section 101 of Regulation S–T to enable other supranational entities that have Commission reporting obligations to file voluntarily their annual, periodic and transactional reports on EDGAR.[127] These additional supranational entities consist of the Inter-American Development Bank,[128] the Asian

[119] 17 CFR 239.32, 239.33 and 239.34.

[120] 17 CFR 239.12, 239.13 and 239.25.

[121] See, for example, Form F–3, Items 6(d) and 6(e).

[122] A Schedule B filer that seeks to incorporate by reference must follow the staff's procedures outlined in a no-action letter that relates specifically to that filter. See, for example, Province of Nova Scotia no-action letter, dated November 1, 1999; Republic of Turkey no-action letter, dated October 19, 1999; and Republic of South Africa no-action letter, dated October 4, 1999.

[123] These requirements include stating that the registrant will furnish upon request a copy of any report, including exhibits and amendments, incorporated by reference. Provice of Nova Scotia no-action letter.

[124] Proposed Securities Act Rule 493(c). See the Commission's interpretive release entitled ''Use of Electronic Media,'' SEC Release No. 33–7856 (April 28, 2000) [65 FR 25843] for guidance on, among other matters, issues arising from the use of hyperlinks in connection with securities documents posted on a company's website.

[125] Proposed Securities Act Rule 493(b).

[126] Regulation S–T Rule 101(b)(6) [17 CFR 232.101(b)(6)]. The World Bank must submit the reports under the Rules and Regulations Pursuant to Section 15(a) of the Bretton Woods Agreements Act [17 CFR 285] and, in particular, 17 CFR 285.2 and 285.3.

[127] Proposed Rule 101(b)(6)(i) through (vi).

[128] See General Rules and Regulations Pursuant to Section 11(a) of the Inter-American Development Bank Act [17 CFR 286].

Development Bank,[129] the African Development Bank,[130] the International Finance Corporation,[131] and the European Bank for Reconstruction and Development.[132] We also intend to amend the EDGAR system and the EDGAR Filer Manual to create electronic form types for these reports to the extent that they do not already exist.

We solicit comment regarding our treatment of supranational entities' reports under the proposed amendments. Should we require, rather than permit, the above supranational entities to file their reports on EDGAR?

G. Documents Submitted Pursuant to Exchange Act Rule 12g3–2(b)

The proposed amendments would not alter our current practice of requiring foreign private issuers to submit on paper their applications and supporting documents for the exemption pursuant to Exchange Act Rule 12g3–2(b).[133] Because a foreign company that has received a Rule 12g3–2(b) exemption is afforded only limited access to U.S. capital markets and is not an Exchange Act reporting company, there is less public interest in, and less need for electronic access to, the submissions that a Rule 12g3–2(b) company must make to the Commission in order to maintain its exempt reporting status. This treatment is consistent with, and analogous to, our current treatment of applications for an exemption from Exchange Act reporting obligations filed pursuant to Exchange Act Section 12(h).[134]

We solicit comment regarding our treatment of Rule 12g3–2(b) documents. Should we permit, but not require, foreign private issuers to submit their Rule 12g3–2(b) applications and supporting documents on EDGAR? Should we require the electronic filing of Rule 12g3–2(b) applications and supporting documents?

H. Transition Period

We anticipate that the amendments would become effective for filings made four months from their date of adoption. This four-month transition period would give foreign issuers enough time to learn the Commission's rules and procedures regarding EDGAR and, if they have not already done so, to train their employees or hire a filing agent that is familiar with our EDGAR system. This transition period would be particularly helpful to foreign issuers that are not yet accustomed to filing their securities documents electronically in some format. Foreign issuers could of course voluntarily file their securities documents on EDGAR during this transition period, and test filings would be encouraged.[135] We solicit comment on whether the proposed four-month period is appropriate. If not, is it too long or too short, and why?

We currently intend to permit registrants that have filed their registration statements in paper before the proposed rules' effective date to continue to file their pre-effective amendments in paper for a limited period of time, for example, one month following the proposed rules' effective date until their registration statements are effective. If the registration statement becomes effective before this limited period has expired, a filer could also file in paper its prospectus submitted pursuant to Securities Act Rule 430A.[136] However, once the limited period has ended, we anticipate that a filer would have to submit any amendment, whether pre-effective or post-effective, or prospectus supplement in electronic format.

We solicit comment on whether to permit this paper filing of registration statements for a limited time after the effective date of the proposed rules. Should we permit it for a period of one month, two months, or more than two months following the rules' effective date? If you believe that a longer period is necessary, for how long and why? Should we require the electronic filing of the last submitted version of the registration statement before effectiveness? Should we permit the paper filing of the prospectus filed pursuant to Rule 430A of the Securities Act, as proposed?

III. Cost-Benefit Analysis

We expect that the proposed amendments to Regulation S–T will achieve the same benefits for investors, foreign issuers and others realized when we adopted the mandated EDGAR filing system for domestic filers in 1993. At that time we excluded foreign filers from mandated EDGAR filing because we believed that they would incur higher costs from the implementation of EDGAR than those faced by domestic filers. Since then significant technological advances have occurred that, together with the recent modernization of EDGAR, should reduce EDGAR costs for foreign filers. Because of these developments, we believe that it is now appropriate to include foreign filers in our mandated EDGAR system.

A. Expected Benefits

The proposed amendments should benefit investors, financial analysts and others by increasing the efficiency of retrieving and disseminating information about foreign issuers that file registration statements, periodic reports and other documents with the Commission. The mandated electronic transmission of foreign issuers' securities documents will enable investors to access more quickly registration statements, annual and periodic reports and other filings containing detailed information about foreign issuers. Instead of having to come in person or through an agent to the Commission's public reference room[137] to conduct a search for a particular foreign issuer filing that is in paper or microfiche, an investor will be able to find and review a foreign issuer filing on any computer with an Internet connection by accessing the EDGAR system through the Commission's website or through a third party website that links to EDGAR. The proposed amendments will also enable financial analysts and others to retrieve, analyze and disseminate more rapidly information about reporting foreign issuers. As a result, not only should an investor be able to form more efficient investment decisions about particular foreign issuers, but foreign issuers should benefit from increased market exposure for their securities in the United States.

[129] See General Rules and Regulations Pursuant to Section 11(a) of the Asian Development Bank Act [17 CFR 287].

[130] See General Rules and Regulations Pursuant to Section 9(a) of the African Development Bank Act [17 CFR 288].

[131] See General Rules and Regulations Pursuant to Section 13(a) of the International Finance Corporation Act [17 CFR 289].

[132] See General Rules and Regulations Pursuant to Section 9(a) of the European Bank for Reconstruction and Development Act [17 CFR 290].

[133] 17 CFR 240.12g3–2(b). This rule provides an exemption from Section 12(g) of the Exchange Act [15 U.S.C. 78l(g)] for foreign private issuers that have not chosen to access the U.S. capital markets. After providing the Commission with information about its home country disclosure requirements and U.S. shareholder information, a qualifying applicant receives an exemption from Exchange Act reporting upon the condition that it furnish to the Commission on an ongoing basis its securities documents required to be furnished or that it furnishes voluntarily in its home country.

[134] 15 U.S.C. 78*l*(h). We require the filing of Section 12(h) exemptive applications in paper pursuant to Regulation S–T Rule 101(c)(17) [17 CFR 232.101(c)(17)]. Although the basis for Exchange Act Rule 12g3–2(b) is Exchange Act Section 12(g)(3) [15 U.S.C. 78l(g)(3)], this statutory section is analogous to Exchange Act Section 12(h).

[135] See Section 5.11.4 of the EDGAR Filer Manual (Release 7.5.b), Volume I for further information about test filings on EDGAR.

[136] 17 CFR 230.430A.

[137] The Commission's public reference room is located in its Washington, D.C. headquarters.

Foreign issuers should further benefit from the increased efficiencies in the filing process resulting from the proposed amendments. By electronically transmitting their securities documents directly to the Commission, foreign issuers will avoid the uncertainties and delays that can occur with the manual delivery of paper filings. Foreign issuers also will benefit from no longer having to submit multiple copies of paper documents to the Commission. Foreign issuers will further benefit from the Commission's longer filing hours for the direct electronic transmission of documents, which will enable foreign issuers to file their securities documents directly via EDGAR until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect.[138]

Both foreign issuers and investors should benefit from increased efficiencies in the Commission's storage, retrieval, and analysis of foreign issuer filings, which are expected to result from the proposed amendments. Because the Commission's staff will be able to retrieve and analyze information about foreign filers more readily than under our current paper system, mandated electronic filing for foreign issuers should facilitate both the staff's review of a particular foreign issuer's registration statement or report and its study of issues affecting most foreign filers. For example, the proposed amendments should enable Commission staff to access quickly a foreign registrant's Exchange Act reports that have been incorporated by reference into a Securities Act registration statement that is the subject of review. Because Commission staff must review these incorporated reports when conducting a full review of the Securities Act document, electronic access to all relevant reports should facilitate the timely completion of the review process for a foreign registrant.

The proposed amendments would also enable Commission staff to access rapidly registration statements, reports and related correspondence pertaining to other foreign issuers that are in the same geographic region or industry group as a foreign registrant. This electronic access would foster the development of consistent comments on issues that are common to foreign registrants. This should result in better disclosure to the benefit of foreign issuers and the investing public alike.

Investors and members of the financial community should also benefit from the proposed amendments' elimination of the rule permitting a paper filer to submit an English language summary of a foreign language exhibit. They also will similarly benefit from the application of Rule 306, which also does not permit a summary of a foreign language document, to foreign issuers that were former paper filers but, following adoption of the proposed amendments, have become mandated EDGAR filers. By requiring former and current paper filers to submit an English translation of the entire foreign language document, the proposed amendments would help ensure that all material information about a foreign company is available to investors and others.

We are aware that many foreign issuers already post their financial statements in electronic format on their websites.[139] Nevertheless, we believe that mandated EDGAR filing for foreign issuers is beneficial to investors for the following reasons.

- Mandated EDGAR filing for foreign issuers would result in the Commission's creation of a central electronic repository for foreign filings that is free to anyone that has access to a computer linked to the Internet.
- Some foreign issuers have only posted on their websites financial statements that meet their home country requirements and not the Commission's requirements.
- Many foreign issuers have electronically formatted their financial statements only in PDF for viewing on their websites. PDF's search capabilities are not as extensive as those provided by the version of HTML that EDGAR filers may use to format electronically their documents.[140] Moreover, since HTML is a dominant language of the Internet, Commission staff will be able to upgrade EDGAR data formatting requirements to keep current with Internet standards and to take advantage of improvements in Internet data formats.

B. Expected Costs

We expect that the proposed amendments will result in some costs to foreign issuers. However, for the following reasons, we also expect that only a minority of foreign issuers should bear the full range of costs resulting from adoption of the proposed amendments.

The expected costs consist of both initial and ongoing costs. Initial costs are those associated with the purchase of compatible computer equipment and software, including EDGAR software if obtained from a third-party vendor and not from the Commission's website.[141] Initial costs also include those resulting from the training of existing employees to be EDGAR proficient or the hiring of additional employees or agents that are already skilled in EDGAR processing. Initial costs further include those associated with the formatting and transmission of a foreign issuer's first document filed on EDGAR. These transmission costs may include those related to subscribing to an Internet service provider.

Ongoing costs are those associated with the electronic formatting and transmission of subsequent EDGAR filings, including amendments to a foreign issuer's initial EDGAR filing. An issuer may also incur future costs resulting from the training or hiring of employees regarding updated EDGAR filing requirements.

The magnitude of these costs for a foreign issuer will depend on its level of technological proficiency and its previous familiarity with EDGAR filing requirements.

For example, of the 1,310 foreign private issuers that were Exchange Act reporting companies as of December 31, 2000,[142] 244 (approximately 19%) not only did not voluntarily file on EDGAR, but also did not electronically present their financial statements on their websites or otherwise for public use. This minority will incur the full range of initial and other costs associated with electronic filing. Some may have to purchase compatible computer equipment. Some may also have to upgrade their operating and word processing software in addition to obtaining the EDGARLink software. They all will have to hire information technology employees or agents that are knowledgeable about the EDGAR process. Then they will incur the costs associated with formatting and transmitting their documents on EDGAR, which may include the cost of subscribing to an Internet service provider.

A much larger segment of Exchange Act reporting foreign private issuers, 1,066 (approximately 81%) already currently electronically format their financial statements in some fashion for

[138] See Part II.C. above.

[139] See Part III.B. below.

[140] PDF is based on a proprietary data format for which only a few software programs with search capabilities are commercially available. In contrast, there are a variety of methods, languages and software available for searching a HTML document.

[141] Once a first-time EDGAR filer has filed a Form ID to obtain its EDGAR access codes, it can download for free the EDGARLink software and EDGAR filing manual from the Commission's website. Filers may also purchase the EDGARLink software and filer manual through the Commission's Public Reference Room and from certain third party vendors. See the *EDGAR Overview* at Section C(1).

[142] See *Reporting Foreign Issuers List.*

public use.[143] This amount includes the 481 Canadian public companies (approximately 37% of reporting foreign private issuers) that are required by the Canadian Securities Administrators to file their securities documents electronically on SEDAR. This amount further includes 585 non-Canadian foreign private issuers (approximately 45% of reporting foreign private issuers) that have chosen to post on their websites their most recent and historical financial statements either as part of their annual or periodic reports or standing alone.[144] These foreign issuers have already incurred initial costs associated with the preparation of disclosure materials in an electronic format. They have already trained their employees or hired an in-house information technology team or a third party agent, such as an Internet services company or financial printer, to format electronically their financial statements and other documents of interest to investors. After obtaining the EDGAR software,[145] these persons should be capable of electronically processing reporting foreign issuers' securities documents for the EDGAR system. Consequently, for four-fifths of Exchange Act reporting foreign issuers, the mandated EDGAR requirements should result only in costs related primarily to the electronic formatting of their securities documents in a format compatible with EDGAR, and transmission of the EDGAR formatted documents to the Commission.

Currently EDGAR only accepts documents formatted in HTML 3.2 or in ASCII. Many Exchange Act reporting foreign issuers have formatted their financial statements only in PDF for presentation on their websites or for submission to foreign securities commissions.[146] These foreign issuers may incur both initial and ongoing costs associated with presenting their financial statements in an EDGAR-compatible format.

However, other reporting foreign issuers have presented their financial statements in some version of HTML on their websites. These foreign issuers have already trained employees or an agent familiar with formatting in HTML. This previous familiarity with HTML should help to reduce the initial EDGAR costs for these reporting foreign private issuers.[147] This previous expertise in HTML may also help to lessen the ongoing costs related to updated EDGAR training that incorporates improvements in HTML.

Moreover, since HTML is a dominant language used to present information on Internet websites, reporting foreign issuers that have formatted their financial statements thus far only in PDF may already have trained employees or an agent familiar with formatting in HTML. If so, these foreign issuers should also face reduced initial and ongoing EDGAR costs.[148]

During the calendar year ended December 31, 2000, 232 (approximately 18%) of reporting foreign private issuers voluntarily chose to file their annual reports, registration statements and other securities documents on EDGAR. For this segment of reporting foreign private issuers, the proposed amendments should result in no initial costs and little or no ongoing costs in addition to those that the foreign issuer had already decided to expend.

For the minority of foreign issuers that have not yet electronically presented their financial statements for public use,[149] as well as for other foreign issuers affected by our proposed amendments, we expect that technological advances regarding the Internet and recent modernization of the EDGAR system should help reduce the initial and ongoing costs resulting from mandated EDGAR filing for foreign issuers. For example, today foreign issuers are able to transmit directly their securities documents to the Commission through the Internet with the assistance of an Internet services provider. A foreign issuer should find that this method is less expensive than using a direct dial modem to connect to the EDGAR system with the resultant long distance charges.

Today there also are numerous financial printers and other information technology specialists that are capable of electronic document processing, including for the EDGAR system, and available on an international basis.[150] No longer must a foreign issuer rely on a filing agent located in a major city in the United States for its EDGAR needs. This closer proximity of EDGAR knowledgeable agents should reduce the travel, long distance and other initial and ongoing costs shouldered by reporting foreign issuers when preparing their documents for the EDGAR system.

Some foreign issuers may be able to file a document in paper under a hardship exemption or other exemption recognized under the proposed amendments. These paper filers may incur costs related to the elimination of the summary option for foreign language documents. In addition, foreign issuers that become EDGAR filers for the first time as a result of the proposed amendments may incur similar costs since Regulation S–T Rule 306 prohibits the use of a summary for a foreign language document as well. These foreign filers may incur costs associated with having to obtain an English translation, instead of an English summary, of an entire foreign language document. Because there has been only limited use of the summary option, we do not expect its elimination to affect many filers. Moreover, many agents, including some with EDGAR expertise, provide translation services. The globalization of these agents in recent years should serve to lessen the costs of obtaining their translation services.[151]

The proposed amendments will cause some domestic persons to file on EDGAR their Schedule TOs, Form CBs and Schedule 13D/Gs in connection with tender offers, exchange offers and other transactions involving the securities of foreign private issuers. However, we expect the number of affected domestic persons to be small. During calendar year 2000, out of a total of 245 Schedule TOs filed with the Commission, only 11 (approximately 4%) were filed in paper. Of these 11

[143] This figure includes the foreign private issuers that were Exchange Act reporting companies as of December 31, 2000 and had filed their securities documents on EDGAR.

[144] While the Exchange Act reporting companies derive from 59 different countries, after Canada the country having the most reporting companies incorporated in its jurisdiction is the United Kingdom. See the table on the first inside cover page of *Reporting Foreign Issuers List.* Of the 143 United Kingdom companies that are Exchange Act reporting companies, 123 or approximately 87% maintain websites upon which they post their financial statements.

[145] As previously mentioned, since the EDGARLink software is now available on the Commission's website, for most new EDGAR filers, the cost of obtaining the EDGAR software should be insignificant.

[146] For example, the Canadian Securities Administrators require that Canadian public companies file their securities documents in PDF on SEDAR. See Canada's National Instrument 13–101 (September 7, 1999).

[147] Even if foreign issuers are unfamiliar with HTML, there are many software packages available that will translate their documents into ASCII or HTML.

[148] Furthermore, since under Regulation S–T Rule 104 [17 CFR 232.104], we allow EDGAR filers to file a PDF version of a document as an unofficial copy, foreign issuers that present their financial statements in PDF for non-EDGAR purposes will not incur additional formatting costs when exercising the option to file an unofficial PDF version on EDGAR.

[149] This minority would include foreign individuals who only file Schedules 13D or 13G.

[150] The websites of each of three large financial printers reveal that, either directly or through affiliates, these financial printers maintain offices in 20–40 different countries.

[151] For example, the websites of the three large financial printers referred to in the preceding footnote advertise their translation services as an integral part of their businesses.

paper Schedule TOs, none were filed by domestic persons.

Similarly, out of a total of 13,282 Schedule 13Ds and 13Gs filed during this same period, only 279 (approximately 2%) were filed in paper. Of these Schedule 13D/G paper filers, 175 (approximately 63%) were filed by foreign entities while several more were filed by individuals with foreign residences. Only 7 domestic entities (approximately 3%) filed Schedule 13D/Gs that pertained to the securities of foreign issuers.[152]

Furthermore, during calendar year 2000, of the 95 Form CBs filed with the Commission, only 32 were filed by Exchange Act reporting companies. An additional eight Form CBs were filed by non-Exchange Act reporting companies regarding transactions with foreign private issuers that were Exchange Act reporting companies. Since the proposed amendments would only require the filing of the Form CB on EDGAR when the filer or subject foreign issuer has Exchange Act reporting obligations at the time of filing, the mandated EDGAR rules for foreign issuers should leave the majority of Form CB filers unaffected.[153] Moreover, of the 40 Form CB filers that would have been affected by the proposed amendments had they been in effect during calendar year 2000, only four (10%) were domestic persons.

Some domestic persons may incur costs resulting from the electronic formatting of their securities documents as a result of the proposed amendments. Since domestic persons are already subject to mandated EDGAR filing, they already have trained employees or agents capable of readily electronically formatting their Form TOs, Form CBs or Schedule 13D/Gs for the EDGAR system. This previous familiarity with EDGAR should reduce the costs incurred by these domestic persons as a result of our proposed amendments.

C. Comment Solicited

We solicit comment on the costs and benefits of the proposed amendments for foreign issuers and affected domestic entities. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of mandated EDGAR filing requirements for foreign issuers. We also request data to quantify the costs and value of the benefits identified.

What are the benefits that investors, financial analysts, other members of the financial community, and foreign issuers should realize from mandated EDGAR filing for foreign issuers? Are they the same benefits achieved from mandated EDGAR filing for domestic issuers? Are there any benefits not discussed above that you believe will result from the proposed amendments? Are there any benefits discussed above that you believe will not result from the proposed amendments?

In particular, will the proposed amendments help an investor to form more efficient investment decisions about foreign issuers? Will the proposed amendments facilitate the market following of a foreign issuer's securities by financial analysts and other members of the financial community?

Will mandated EDGAR filing for foreign issuers benefit investors by resulting in our creation of a central electronic repository for foreign filings that is free to anyone who has access to a computer linked to the Internet? Will the proposed amendments further benefit investors by resulting in a central electronic database of foreign issuer filings that have been prepared in accordance with the Commission's rules and that are readily searchable?

What are the expected initial and ongoing costs of mandated EDGAR filing for foreign issuers? Will the magnitude of these costs for a foreign issuer depend on its level of technological proficiency and its previous familiarity with EDGAR filing requirements? Will the full range of these costs be borne by only a minority of foreign issuers? If so, what does this full range of costs entail? Are there costs in addition to those discussed above for a foreign issuer that, either because of geographic location or its own state of development, lacks the necessary computer equipment and software and technically proficient employees or agents to present its financial statements and other documents in electronic format for public use?

What are the expected costs of the proposed amendments for foreign governments? Do you expect these costs to be higher than the costs incurred by foreign private issuers?

What are the expected costs of the proposed amendments for a foreign issuer that already electronically formats its financial statements for presentation on its website or to meet the requirements of its sovereign securities commission? Are there costs in addition to those discussed above that you expect would affect this foreign issuer? Will previous familiarity with HTML by this foreign issuer's employees or filing agent reduce the initial and ongoing costs of EDGAR processing for a foreign issuer resulting from the proposed amendments? What additional costs, if any, will this foreign issuer incur if its employees or agent is only familiar with PDF or a version of HTML that is not the version of HTML used for filing documents on EDGAR?

What are the expected costs, if any, of the proposed amendments for a foreign issuer that is already filing its securities documents on EDGAR?

Will the ability of filers to use the Internet reduce the initial and ongoing costs resulting from mandated EDGAR for foreign filers, as expected? Is the availability of compatible computer equipment, telecommunications links to the Internet, and Internet service providers widespread enough so that most foreign issuers that are currently paper filers will be able to use the Internet to transmit their documents on EDGAR?

Similarly, is the availability of filing agents with EDGAR expertise widespread enough so that most foreign issuers affected by the proposed amendments will be able to use an agent in their own or a nearby country to format and transmit their documents on EDGAR? If so, will this widespread availability of EDGAR filing agents help to reduce the initial and ongoing costs resulting from mandated EDGAR filing for foreign issuers? Are there barriers to entry or other anti-competitive factors that could limit the availability of EDGAR proficient filing agents in some countries or global regions?

Is the current paper filer rule permitting the filing of an English summary instead of an English translation of an entire foreign language document useful or of limited use? How widespread are English translation services? Will the availability of agents offering English translation services help to lessen the costs associated with obtaining an English translation of a foreign language document?

Will the proposed amendments affect domestic filers? If so, how? Do affected domestic entities already have EDGAR-trained employees or agents that are capable of formatting and transmitting their Schedule TOs, Form CBs and Schedule 13D/Gs on EDGAR? If so, will this previous EDGAR expertise lessen the costs resulting from the proposed amendments for domestic filers?

[152] We also expect that the proposed amendments will not have a significant impact on affected domestic entities. According to two large financial printers, the average cost of electronically formatting and transmitting a Schedule 13D or 13G on EDGAR is $250.

[153] Had the proposed amendments been in effect during the year 2000, they would have required approximately 42% (40 out of 95) Form CBs submitted in paper during that year to be filed on EDGAR.

IV. Promotion of Efficiency, Competition and Capital Formation Analysis

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules it adopts. Furthermore, 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 necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition and capital formation.

We believe that the proposed amendments would enable investors and other interested parties to have the same access to financial and other material information about foreign issuers that have registered securities with the Commission as they currently enjoy with domestic reporting companies. By facilitating the more efficient transmission, retrieval, analysis and dissemination of information contained in foreign issuers' and related third party securities filings with the Commission, the proposed amendments should enhance an investor's ability to make an informed investment decision about a foreign issuer's securities. They also should increase the market access of a reporting foreign issuer's securities in the United States.

In addition, the proposed amendments would subject foreign issuers to the same or substantially similar electronic filing costs shouldered by domestic issuers, thereby placing foreign issuers on a more equal footing, and encouraging competition with domestic issuers. Furthermore, the proposed amendments would facilitate the dissemination of information about a foreign issuer, which may be a non-reporting company, engaged in an exempt cross-border tender offer transaction with a domestic or foreign Exchange Act reporting company. We recognize that the proposed amendments may disparately impact some foreign issuers depending on their level of technological proficiency.

We solicit comment on whether, if adopted, the proposed amendments would result in any anti-competitive effects or promote efficiency, competition and capital formation. We encourage commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of the proposed amendments.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we request information regarding the potential impact of the proposed amendments on the economy on an annual basis. In particular, commenters should address whether the proposed amendments, if adopted, would have a $100,000,000 annual effect on the economy, cause a major increase in costs or prices, or have a significant adverse effect on competition, investment, or innovation. Commenters should provide empirical data to support their views.

V. Paperwork Reduction Act Analysis

The proposed rule amendments would affect six forms that contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[154] The titles of the affected information collections are the EDGAR Forms ID, ET, SE and TH,[155] Securities Act Form F–1,[156] and Exchange Act Form 20–F [157] We have based our estimates of the effects that the proposed amendments would have on these information collections primarily on our review of the most recently completed Paperwork Reduction Act submissions for these forms, on the forms' requirements, and on actual filings of these forms. Because 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, we have provided below the corresponding control number for each of the affected forms. We have submitted this rule proposal to the Office of Management and Budget (''OMB'') for review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Form ID (OMB Control Number 3235–0328) is used by registrants, third party filers or their agents to request the assignment of access codes that permit the filing of securities documents on EDGAR. This form enables the Commission to assign an identification number (''CIK''), confirmation code (''CCC''), password (''PW'') and password modification (''PMAC'') to each EDGAR filer, each of which is essential to the security of the EDGAR system.

Form ET (OMB Control Number 3235–0329) is used by an EDGAR filer when submitting filings on magnetic cartridge. The information provided on Form ET is technical information about the magnetic cartridge contents as well as information that identifies a contact person who can answer questions about the tape cartridge.

Form SE (OMB Control Number 3235–0327) is used by an EDGAR filer when submitting paper format exhibits either pursuant to a hardship exemption under Regulation S–T Rules 201 and 202 or as otherwise allowed by Regulation S–T. The information provided on a Form SE primarily identifies each paper format exhibit submitted. A Form SE filer must also submit the required number of copies of each paper format exhibit.

Form TH (OMB Control Number 3235–0425) is used by an EDGAR filer to request a temporary hardship exemption pursuant to Regulation S–T Rule 201. A filer must submit the Form TH along with the required number of copies of the paper format securities document. The information provided on Form TH enables the Commission to determine whether the filer's circumstances justify the grant of a temporary hardship exemption.

Form F–1 (OMB Control No. 3235–0258) is used by a foreign private issuer to register its initial public offering or a subsequent offering of securities under the Securities Act. In addition to requiring the disclosure of material information about the registrant, Form F–1 also requires the attachment of numerous exhibits, including copies of the registrant's memoranda of association, articles of incorporation, and material contracts.

Form 20–F (OMB Control No. 3235–0288) is used by a foreign private issuer both to register a class of securities under the Exchange Act as well as to provide its annual report required under the Exchange Act. Like the Form F–1, Form 20–F also requires the filing of numerous exhibits.

We estimate that approximately 7,000 registrants file Form ID each year at an estimated .15 hours per response for a total annual burden of 1,050 hours. We expect that, if adopted, the proposed rule amendments would cause an additional 1,078 registrants to file a Form ID. We anticipate that these additional registrants would require 162 hours in the aggregate to complete the Form ID, which would increase the total annual burden to 1,212 hours.

We estimate that 120 registrants file Form ET each year at an estimated .25 hours per response for a total annual burden of 30 hours. We expect that, if adopted, the proposed rule amendments would cause an additional nine registrants to file a Form ET. We anticipate that these additional

[154] 44 U.S.C. 3501 *et seq.*

[155] 17 CFR 239.63, 239.62, 239.64 and 239.65. These forms are also promulgated as Exchange Act forms under 17 CFR 249.446, 249.444, 249.445, and 249.447.

[156] 17 CFR 239.31.

[157] 17 CFR 249.220.f.

registrants would require two hours in the aggregate to complete the Form ET, which would increase the total annual burden to 32 hours.

We estimate that 710 registrants file Form SE each year at an estimated .10 hours per response for a total annual burden of 71 hours. We expect that, if adopted, the proposed rule amendments would cause an additional 53 registrants to file a Form SE. We anticipate that these additional registrants would require approximately 5 hours in the aggregate to complete the Form SE, which would increase the total annual burden to 76 hours.

We estimate that 64 registrants file Form TH each year at an estimated .33 hours per response for a total annual burden of 21 hours. We expect that, if adopted, the proposed rule amendments would cause an additional five registrants to file a Form TH. We anticipate that these additional registrants would require two hours in the aggregate to complete the Form TH, which would increase the total annual burden to 23 hours.

We estimate that 140 registrants file Form F–1 each year at an estimated 1,881 hours per response for a total of 263,340 burden hours. We further estimate that registrants would incur 25% of the total burden hours (65,835 hours) and outside law firms would account for 75% of the total burden hours (197,505 hours) at an average cost of $175 per hour for a total of $34,563,375. We expect that, if adopted, the proposed amendments would cause seven registrants to incur additional burden hours and costs for services pertaining to translating into English all of a foreign language exhibit or other document instead of providing an English summary. We estimate that for each of the seven registration statements affected, there would occur 48 additional burden hours pertaining to these translation requirements for a total of 336 additional burden hours. We expect that registrants would incur 25% of these additional burden hours (84 hours). We further expect that the proposed amendments would require the translation of an additional 18 pages per filing at a cost of $75 per page ($1013 per filing) for an aggregate increase of $7,091. Thus, we estimate that the proposed amendments would increase the total annual burden incurred by registrants in the preparation of a Form F–1 to 65,919 hours. We further estimate that the proposed amendments would increase the total annual costs attributed to the preparation of the Form F–1 by outside firms to $34,570,466.

We estimate that foreign private issuers file 1165 Form 20–Fs each year at an estimated 1721 hours per response for a total of 2,004,965 annual burden hours. We further estimate that foreign private issuers would incur 25% of the total burden hours (501,241 hours) and outside law firms would account for 75% of the total burden hours (1,503,724 hours) at an average cost of $175 per hour for a total of $263,151,700. We expect that, if adopted, the proposed amendments would cause 58 foreign private issuers to incur additional burden hours and costs for English translation services. We estimate that for each of the Form 20–Fs affected, there would occur 48 additional burden hours pertaining to these translation requirements for a total of 2784 additional burden hours. We expect that foreign private issuers would incur 25% of these additional burden hours (696 hours). We further expect that the proposed amendments would require the translation of an additional 18 pages per filing at a cost of $75 per page ($1013 per filing) for an aggregate increase of $58,754. Thus, we estimate that the proposed amendments would increase the total annual burden incurred by foreign private issuers in the preparation of a Form 20–F to 501,937 hours. We further estimate that the proposed amendments would increase the total annual costs attributed to the preparation of the Form 20–F by outside firms to $263,210,454.

We are soliciting comment on the expected Paperwork Reduction Act effects of the proposed rule amendments. In particular, we solicit comment on the accuracy of our additional burden hour and cost estimates expected to result from the proposed amendments. We further request comment on whether the expected increase in the number of Forms ID, ET, SE and TH filed and the expected increase in the number of exhibit pages translated into English following adoption of the proposed amendments is necessary for the proper performance of the Commission's functions, including whether the additional information garnered will have practical utility. In addition, we solicit comment on whether there are ways to enhance the quality, utility, and clarity of the information to be collected. We further solicit comment on whether there are ways to minimize the burden of information collection on those foreign filers who will file the above forms, including through the use of automated collection techniques or other forms of information technology. Finally, we solicit comment on whether the proposed amendments will have any effects on any other collection of information not previously identified in this section.

If you would like to submit comments on the collection of information requirements and expected effects, please direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503. You should also send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File No. S7–18–01. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–18–01, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB must make a decision concerning the affected collections of information between 30 and 60 days after publication of this release. Consequently, in order to ensure that your comments achieve their fullest effect, you should submit comments to OMB within 30 days of this release's publication.

VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,[158] our Chairman has certified that, if adopted, the proposed amendments would not have a significant economic impact on a substantial number of small entities. We have attached this certification as Appendix A to this release. We encourage written comments regarding this certification. We request in particular that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Basis and Text of Proposed Rule Amendments

We propose Securities Act Rule 493b and the amendments to Securities Act Rule 403, the rescission of Regulation S–T Rule 601, the amendments to Regulation S–T Rules 100, 101, 303, 306 and 311, the amendments to Exchange Act Rule 12b–12, and the amendments to the Securities Act and Exchange Act forms, under the authority in Sections 6, 7, 10 and 19(a) of the Securities Act,[159] and Sections 3, 12, 13, 14, 15(d), 23(a)

[158] 5 U.S.C. 605(b).

[159] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

and 35A of the Exchange Act.[160] We further propose the amendment to Form F–X under Sections 304, 305, 307, 310 and 319 of the Trust Indenture Act.[161]

List of Subjects

17 CFR Parts 230, 232, 239, 240, 249, and 269

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

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

1. The authority citation for Part 230 continues to read in part 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. The authority citation following § 230.403 is removed.

3. Amend § 230.403 by revising paragraph (c) to read as follows:

§ 230.403 Requirements as to paper, printing, language and pagination.

* * * * *

(c) All Securities Act filings must be in the English language. If a filer seeks to include a foreign language document in a filing, for example, as an exhibit, it must submit instead a fair and accurate English translation of the entire foreign language document. Every English translation document must include a written representation that the document is a fair and accurate English translation of the foreign language document. A designated officer or official of the filer must sign the written representation in accordance with § 230.402(e). A filer must provide a copy of any foreign language document upon the request of Commission staff.

* * * * *

4. Section 230.493 is revised to read as follows:

§ 230.493 Additional Schedule B disclosure and filing requirements.

(a) The copy of the opinion or opinions of counsel required by paragraph (14) of Schedule B shall be filed either as a part of the registration statement as originally filed, or as an amendment to the registration statement.

(b) A foreign government or political subdivision of a foreign government must file a registration statement submitted under Schedule B of the Act on the Commission's Electronic Data Gathering and Retrieval System (EDGAR) unless it has obtained a hardship exemption under § 232.201 or § 232.202 of this chapter (Regulation S–T).

(c) A foreign government or political subdivision that intends to incorporate by reference into a Schedule B registration statement its annual report on Form 18–K (§ 249.318 of this chapter), and any exhibits or amendments to this report, must disclose in the Schedule B registration statement:

(1) That the Commission maintains an Internet site that contains reports and other information regarding issuers that file electronically with the Commission; and

(2) The address for the Commission Internet site (http://www.sec.gov). A foreign government or political subdivision filing on EDGAR is further encouraged to give its Internet address, if available.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

5. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

6. Amend § 232.100 by revising paragraphs (a) and (c) to read as follows:

§ 232.100 Persons and entities subject to mandated electronic filing.

* * * * *

(a) Registrants whose filings are subject to review by the Division of Corporation Finance;

* * * * *

(c) Any party (including natural persons) that files a document jointly with, or as a third party filer with respect to, a registrant that is subject to mandated electronic filing requirements.

7. Amend § 232.101:

a. By removing the word ''and'' at the end of paragraph (a)(1)(iv);

b. By removing the period at the end of paragraph (a)(1)(v) and in its place adding a semicolon;

c. By adding paragraphs (a)(1)(vi), (a)(1)(vii) and (a)(1)(viii);

d. By revising paragraphs (b)(1) and (b)(6);

e. By adding paragraphs (b)(7) and (b)(8);

f. By removing the period at the end of each of paragraphs (c)(5), (c)(6), and (c)(14) and in its place adding a semicolon;

g. By adding the word ''and'' at the end of paragraph (c)(16);

h. By removing paragraph (c)(15); and

i. By redesignating paragraphs (c)(16) and (c)(17) as paragraphs (c)(15) and (c)(16).

The additions and revisions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(vi) Form CB (§§ 239.800 and 249.480 of this chapter) filed under § 230.801 or 230.802 of this chapter or § 240.13e–4(h)(8), 240.14d–1(c), or 240.14e–2(d) of this chapter if:

(A) The filer of the Form CB is a company that is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)); or

(B) The foreign private issuer that is the subject of a transaction covered by a Form CB is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act;

(vii) Form F–X (§ 239.42 of this chapter) except as otherwise provided by § 232.101(b)(8); and

(viii) Form F–N (§ 239.43 of this chapter) filed by foreign banks and insurance companies and certain of their holding companies and finance subsidiaries under § 230.489 of this chapter.

* * * * *

(b) * * *

(1) Annual reports to security holders furnished for the information of the Commission under § 240.14a–3(c) of this chapter or § 240.14c–3(b) of this chapter, under the requirements of Form 10–K or Form 10–KSB (§§ 249.310 or 249.310b of this chapter) filed by registrants under Exchange Act Section 15(d) (15 U.S.C. 78o(d)) , or by foreign issuers filed on Form 6–K (§ 249.306 of this chapter) under § 240.13a–16 of this chapter or § 240.15d–16 of this chapter;

* * * * *

(6) Periodic reports and reports with respect to distributions of primary obligations filed by:

(i) The International Bank for Reconstruction and Development under Section 15(a) of the Bretton Woods Agreements Act (22 U.S.C. 286k–1(a)) and Title 17, Part 285 of the Code of Federal Regulations;

(ii) The Inter-American Development Bank under Section 11(a) of the Inter-

[160] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o(d), 78w, and 78*ll*.

[161] 15 U.S.C. 77ddd, 77eee, 77ggg, 77jjj and 77sss.

American Development Bank Act (22 U.S.C. 283h(a)) and Title 17, Part 286 of the Code of Federal Regulations;

(iii) The Asian Development Bank under Section 11(a) of the Asian Development Bank Act (22 U.S.C. 285h(a)) and Title 17, Part 287 of the Code of Federal Regulations;

(iv) The African Development Bank under Section 9(a) of the African Development Bank Act (22 U.S.C. 290i–9(a)) and Title 17, Part 288 of the Code of Federal Regulations;

(v) The International Finance Corporation under Section 13(a) of the International Finance Corporation Act (22 U.S.C. 282k(a)) and Title 17, Part 289 of the Code of Federal Regulations; and

(vi) The European Bank for Reconstruction and Development under Section 9(a) of the European Bank for Reconstruction and Development Act (22 U.S.C. 290*l*–7(a)) and Title 17, Part 290 of the Code of Federal Regulations;

(7) A Form CB (§§ 239.800 and 249.480 of this chapter) if neither the filer nor the company that is the subject of the Form CB transaction is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o(d));

(8) A Form F–X (§ 239.42 of this chapter) if:

(i) Neither the filer nor the company that is the subject of the transaction under Form CB (§§ 239.800 and 249.480 of this chapter) is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o(d)); or

(ii) Filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (§§ 230.251—230.263 of this chapter).

* * * * *

8. Amend § 232.303 by revising paragraph (b) to read as follows:

§ 232.303 Incorporation by reference.

(a) * * *

(b) If a filer incorporates by reference into an electronic filing any portion of an annual or quarterly report to security holders, it must also file the portion of the annual or quarterly report to security holders in electronic format as an exhibit to the filing, as required by Regulation S–K Item 601(b)(13) (§ 229.601(b)(13) of this chapter) and Regulation S–B Item 601(b)(13) (§ 228.601(b)(13) of this chapter). If a foreign issuer incorporates by reference into any electronic filing any portion of an annual or other report to security holders, it also must file the portion of the annual or other report to security holders in electronic format as an exhibit to the filing. The requirements of this paragraph do not apply to incorporation by reference by an investment company from an annual or quarterly report to security holders.

9. Amend § 232.306:

a. By revising paragraph (a);

b. By removing the Note following paragraph (a);

c. By redesignating paragraph (b) as paragraph (d); and

d. By adding new paragraph (b) and paragraph (c).

The additions and revisions read as follows:

§ 232.306 Foreign language documents and symbols.

(a) All electronic filings and submissions must be in the English language. If a filer seeks to include a foreign language document in an electronic filing or submission, for example, as an exhibit, it must submit instead a fair and accurate English translation of the entire foreign language document in electronic format, except as otherwise permitted under paragraph (b) of this section.

(b) A foreign government or its political subdivision must electronically file a fair and accurate English translation, if available, of its latest annual budget as presented to its legislative body, as Exhibit B in Form 18 (§ 249.218 of this chapter) or Exhibit (c) in Form 18-K (§ 249.318 of this chapter). If no English translation is available, a foreign government or political subdivision must submit a copy of the foreign language version of its latest annual budget in paper under cover of Form SE (§ 249.444 of this chapter).

(c) Every English translation filed or submitted under paragraph (a) or (b) of this section must include a written representation that the electronic filing or submission is a fair and accurate English translation of the foreign language document. A designated officer or official of the filer must sign the written representation in the manner set forth by § 232.302. A filer must provide the foreign language version of a document upon the request of Commission staff.

* * * * *

10. By amending § 232.311 by redesignating paragraphs (f), (g) and (h) as paragraphs (h), (i) and (f) and by adding a new paragraph (g) to read as follows:

§ 232.311 Documents submitted in paper under cover of Form SE.

* * * * *

(g) A foreign government or political subdivision that is not filing in electronic format an English translation of its latest annual budget submitted as Exhibit B in Form 18 (§ 249.218 of this chapter) or Exhibit (c) in Form 18–K (§ 249.318 of this chapter) must file a copy of the foreign language version of its latest annual budget in paper under cover of Form SE (§§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter) in accordance with § 232.306(b).

* * * * *

§ 232.601 [Removed and Reserved]

11. § 232.601 is removed and reserved.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

12. 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.

* * * * *

13. Amend Form F–7 (referenced in § 239.37), General Instructions II, by revising paragraph G. to read as follows:

Note: The text of Form F–7 does not and the amendment will not appear in the Code of Federal Regulations.

Form F–7

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

G. You must file a registration statement in electronic format in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). If any part of the body of the Canadian registration statement is in a language other than English, you must provide an English translation instead of the foreign language version when filing the registration statement in electronic format with the Commission. If you wish to submit a foreign language exhibit or other supplementary document with the registration statement, you must file instead an English translation of the exhibit or other document as required by Regulation S–T Rule 306. If you are filing the registration statement in paper under a hardship exemption provided by Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file a registration statement, including exhibits and other supplementary documents, that

complies with Securities Act Rule 403(c) (17 CFR 230.403(c)).

* * * * *

14. Amend Form F–8 (referenced in § 239.38), General Instructions IV, by revising paragraph I. to read as follows:

Note: The text of Form F–8 does not and the amendment will not appear in the Code of Federal Regulations.

Form F–8

* * * * *

General Instructions

* * * * *

IV. Application of General Rules and Regulations

* * * * *

I. You must file a registration statement in electronic format in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). If any part of the body of the Canadian registration statement is in a language other than English, you must provide an English translation instead of the foreign language version when filing the registration statement in electronic format with the Commission. If you wish to submit a foreign language exhibit or other supplementary document with the registration statement, you must file instead an English translation of the exhibit or other document as required by Regulation S–T Rule 306. If you are filing the registration statement in paper under a hardship exemption provided by Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file a registration statement, including exhibits and other supplementary documents, that complies with Securities Act Rule 403(c) (17 CFR 230.403(c)).

* * * * *

15. Amend Form F–9 (referenced in § 239.39), General Instructions II, by revising paragraph I. to read as follows:

Note: The text of Form F–9 does not and the amendment will not appear in the Code of Federal Regulations.

Form F–9

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

I. You must file a registration statement in electronic format in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). If any part of the body of the Canadian registration statement is in a language other than English, you must provide an English translation instead of the foreign language version when filing the registration statement in electronic format with the Commission. If you wish to submit a foreign language exhibit or other supplementary document with the registration statement, you must file instead an English translation of the exhibit or other document as required by Regulation S–T Rule 306. If you are filing the registration statement in paper under a hardship exemption provided by Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file a registration statement, including exhibits and other supplementary documents, that complies with Securities Act Rule 403(c) (17 CFR 230.403(c)).

* * * * *

16. Amend Form F–10 (referenced in § 239.40), General Instructions II, by revising paragraph J. to read as follows:

Note: The text of Form F–10 does not and the amendment will not appear in the Code of Federal Regulations.

Form F–10

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

J. You must file a registration statement in electronic format in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). If any part of the body of the Canadian registration statement is in a language other than English, you must provide an English translation instead of the foreign language version when filing the registration statement in electronic format with the Commission. If you wish to submit a foreign language exhibit or other supplementary document with the registration statement, you must file instead an English translation of the exhibit or other document as required by Regulation S–T Rule 306. If you are filing the registration statement in paper under a hardship exemption provided by Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file a registration statement, including exhibits and other supplementary documents, that complies with Securities Act Rule 403(c) (17 CFR 230.403(c)).

* * * * *

17. Amend Form F–80 (referenced in § 239.41), General Instructions IV, by revising paragraph I. to read as follows:

Note: The text of Form F–80 does not and the amendments will not appear in the Code of Federal Regulations.)

Form F–80

* * * * *

General Instructions

* * * * *

IV. Application of General Rules and Regulations

* * * * *

I. You must file a registration statement in electronic format in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). If any part of the body of the Canadian registration statement is in a language other than English, you must provide an English translation instead of the foreign language version when filing the registration statement in electronic format with the Commission. If you wish to submit a foreign language exhibit or other supplementary document with the registration statement, you must file instead an English translation of the exhibit or other document as required by Regulation S–T Rule 306. If you are filing the registration statement in paper under a hardship exemption provided by Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file a registration statement, including exhibits and other supplementary documents, that complies with Securities Act Rule 403(c) (17 CFR 230.403(c)).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

18. 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.

* * * * *

19. The authority citations following § 240.12b–12 are removed.

20. Amend § 240.12b–12 by revising paragraph (d) to read as follows:

§ 240.12b–12 Requirements as to paper, printing and language.

* * * * *

(d)(1) All Exchange Act filings and submissions must be in the English language. If a filer seeks to include a foreign language document in a filing or submission, for example, as an exhibit, it must submit instead a fair and accurate English translation of the entire foreign language document, except as otherwise permitted under paragraph (d)(2) of this section.

(2) A foreign government or its political subdivision must provide a fair and accurate English translation of its latest annual budget submitted as Exhibit B in Form 18 (§ 249.218 of this chapter) or Exhibit (c) in Form 18–K (§ 249.318 of this chapter) only if one is available. If no English translation is available, a filer must provide a paper copy of the foreign language version of its latest annual budget as an exhibit.

(3) In any English translation document submitted pursuant to paragraphs (d)(1) or (2) of this section, a filer must include a written representation that the document is a fair and accurate English translation of the foreign language document. A designated officer or official of the filer must sign the written representation in accordance with § 240.12b–11(d). A filer must provide a copy of any foreign language document upon the request of Commission staff.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

21. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

22. Amend Form 20–F (referenced in § 249.220f) by revising General Instruction D. to read as follows:

Note: The text of Form 20–F does not and the amendment will not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

General Instructions

* * * * *

D. How To File Registration Statements and Reports on This Form

(a) If you have technical questions about our Electronic Data Gathering and Retrieval System (EDGAR) or want to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. If you have questions about the EDGAR rules, call the Office of EDGAR Policy at (202) 942–2940.

(b) If you are filing the Form 20–F registration statement or report in paper under a hardship exemption in Rule 201 or 202 of Regulation S–T (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file with the Commission (i) three complete copies of the registration statement or report, including financial statements, exhibits and all other papers and documents filed as part of the registration statement or report, and (ii) five additional copies of the registration statement or report, which need not contain exhibits. File at least one complete copy of the registration statement or report, including financial statements, exhibits and all other papers and documents filed as part of the registration statement or report, with each exchange on which any class of securities is or will be registered. Manually sign at least one complete copy of the registration statement or report filed with the Commission and one copy filed with each exchange. Type or print the signatures on copies that are not manually signed. See Exchange Act Rule 12b–11(d) (17 CFR 240.12b–11(d)) for instructions about manual signatures and the Instructions as to Exhibits of this Form for instructions about signatures through powers of attorney.

(c) When registration statements and reports are permitted to be filed in paper, they are filed with the Commission by sending or delivering them to our File Desk between the hours of 9:00 a.m. and 5:30 p.m., Washington, D.C. time. The File Desk is closed on weekends and federal holidays. If you file a paper registration statement or report by mail or by any means other than hand delivery, the address is U.S. Securities and Exchange Commission, Attention: File Desk, 450 Fifth Street, NW., Washington, DC 20549. We consider documents to be filed on the date our File Desk receives them.

* * * * *

23. Amend Form CB (referenced in § 239.800 and § 249.480) by revising the cover page to read as follows:

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

OMB Approval

OMB Number: 3235–0518
Expires: March 31, 2002
Estimated average burden hours per response: 2.0

United States Securities and Exchange Commission, Washington, D.C. 20549

Form CB

Tender Offer/Rights Offering Notification Form (Amendment No. _____)

Please place an X in the box(es) to designate the appropriate rule provision(s) relied upon to file this Form:

☐ Securities Act Rule 801 (Rights Offering)
☐ Securities Act Rule 802 (Exchange Offer)
☐ Securities Act Rule 13e–4(h)(8) (Issuer Tender Offer)
☐ Exchange Act Rule 14d–1(c) (Third Party Tender Offer)
☐ Exchange Act Rule 14e–2(d) (Subject Company Response)
☐ Filed in paper if permitted by Regulation S–T Rule 101(b)(7)

Note: Regulation S–T Rule 101(b)(7) only permits the filing of a Form CB in paper if neither the subject company nor the person furnishing the form has reporting obligations under Section 13 or 15(d) of the Exchange Act.

* * * * *

24. Amend Form 6–K (referenced in § 249.306) by revising the cover page and paragraph D. of the General Instructions to read as follows:

Note: The text of Form 6-K does not and the amendments will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number: 3235–0116
Expires: March 31, 2003
Estimated average burden hours per response: 8

Form 6–K

Securities and Exchange Commission, Washington, D.C. 20549

Report of Foreign Private Issuer

Pursuant to Rule 13a–16 or 15d–16 under the Securities Exchange Act of 1934

For the month of _____, 20
Commission File Number _____

_____
(Translation of registrant's name into English)

_____
(Address of principal executive offices)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20–F or Form 40–F:

Form 20–F _____ Form 40–F _____

Indicate by check mark if the registrant is submitting the Form 6–K in paper as permitted by Regulation S–T Rule 101(b)(1): _____

Note: Regulation S–T Rule 101(b)(1) only permits the submission in paper of a Form 6–K if submitted solely to provide an attached annual report to security holders.

Indicate by check mark whether by furnishing the information contained in this Form, the registrant is also thereby furnishing the information to the Commission pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934.

Yes _____ No _____

If ''Yes'' is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3–2(b): 82–__

* * * * *

General Instructions

* * * * *

D. Application of General Rules and Regulations

You must submit a Form 6–K report in electronic format in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). If you wish to submit a foreign language document as part of the report, you must file instead an English translation of the document as required by Regulation S–T Rule 306.

You may submit a Form 6–K in paper under Regulation S–T Rule 101(b)(1) (17 CFR 232.101(b)(1)) if the sole purpose of the Form 6–K is to furnish an annual report to security holders. If you seek to file a Form 6–K in paper under this rule, you must check the appropriate box on the cover page of the Form 6–K.

You may also submit a Form 6–K in paper under a hardship exemption provided by Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202). If you are submitting a Form 6–K in paper under a hardship exemption, on the cover page of the Form 6–K you must provide the legend required by Regulation S–T Rule 201(a)(2) or 202(c) (17 CFR 232.201(a)(2) or 232.202(c)).

When submitting a Form 6–K in paper in the limited circumstances described above, or as otherwise permitted by the Commission, you must submit the Form 6–K report, including all documents submitted with the report, in compliance with Exchange Act Rule 12b–12(d) (17 CFR 240.12b–12(d)).

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

25. The authority citation for Part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*ll*(d), unless otherwise noted.

26. Amend Form F–X (referenced in §§ 239.42, 249.250 and 269.5), General Instructions II, by revising paragraph B. to read as follows:

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

FORM F–X

* * * * *

GENERAL INSTRUCTIONS

* * * * *

II.

* * * * *

B. (1) This is [check one]

☐ an original filing for the Filer

☐ an amended filing for the Filer

(2) Check the following box if you are filing the Form F–X in paper in accordance with Regulation S–T Rule 101(b)(8) ☐

Note: Regulation S–T Rule 101(b)(8) only permits the filing of the Form F–X in paper:

(a) If neither the filer nor the company that is the subject of the Form CB transaction is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act; or

(b) If filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (230.251–230.263 of this chapter).

* * * * *

Dated: September 28, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A

Regulatory Flexibility Act Certification

I, Harvey L. Pitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rescission of Rule 601 under Regulation S–T, and the proposed amendments of Rules 403 and 493 under the Securities Act of 1933 (''Securities Act''), Rules 100, 101, 303, 306, and 311 under Regulation S–T, Rule 12b–12 under the Securities Exchange Act of 1934 (''Exchange Act''), Forms F–7, F–8, F–9, F–10, and F–80 under the Securities Act, Forms 20–F and 6–K under the Exchange Act, Form CB under the Securities Act and Exchange Act, and Form F–X under the Securities Act, Exchange Act, and Trust Indenture Act of 1939 (''Trust Indenture Act''), if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (''Act''). The reasons for this certification are as follows.

The proposed rule amendments would require foreign private issuers and foreign governments to file their securities documents, including Securities Act registration statements and Exchange Act registration statements, schedules, and reports electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. The current rules permit, but do not require, foreign issuers to file their securities documents on EDGAR.

The proposed amendments would primarily affect foreign issuers and not domestic companies since the Commission already requires domestic companies to file their securities documents on EDGAR. While the proposed amendments would affect some domestic entities by requiring them to file on EDGAR their third party forms, such as Schedule 13Ds and 13Gs, Schedule TOs, and Form CBs that pertain to foreign private issuers, we do not expect the proposed amendments to affect a substantial number of small entities.

Based on an analysis of the language and legislative history of the Act, Congress did not intend that the Act apply to foreign issuers or natural persons. Moreover, the Exchange Act and Securities Act rules define a small entity for purposes of the Act as one having assets of $5 million or less as of the last day of its most recently completed fiscal year. As explained below, most of the above third party forms have been filed by foreign issuers, natural persons or domestic entities that have assets significantly greater than $5 million, and which are, therefore, beyond the scope of the Act.

For example, of the 279 Schedule 13Ds and 13Gs filed in paper in calendar year 2000, only seven were filed by domestic entities regarding securities of foreign issuers. Of these seven domestic filers, only two had assets of $5 million or less as of the last day of their most recently completed fiscal year. Similarly, of the 11 Schedule TOs filed during this same period, none was filed by a domestic entity.

The proposed amendments would only require the filing of a Form CB on EDGAR if the filer or the foreign company that is the subject of the Form CB transaction is an Exchange Act reporting company. Of the 95 Form CBs filed with the Commission during calendar year 2000, 32 were filed by Exchange Act reporting companies and an additional eight were filed by non-Exchange Act reporting companies concerning subject companies that were Exchange Act reporting companies. Of these 40 Form CBs that would have been affected by the proposed amendments had they been enacted then, only four were filed by domestic entities. Each of these four domestic entities had assets that were significantly greater than $5 million as of the last day of its most recently completed fiscal year.

While a few small domestic entities may incur costs resulting from the proposed amendments, these costs should not have a significant economic impact. For example, we understand that the average cost of electronically formatting and transmitting a Schedule 13D or 13G on EDGAR is approximately $250. In addition, the proposed amendments will not effect any change in the substantive requirements of the federal securities laws.

For all the foregoing reasons, the proposed amendments should not have a significant

economic impact on a substantial number of small entities.

Dated: September 25, 2001.

Harvey L. Pitt,
Chairman.

[FR Doc. 01–24806 Filed 10–3–01; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Thursday,
October 4, 2001

Part V

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7074–5]

RIN 2060–AG87

National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing friction materials manufacturing facilities. Some of these facilities, specifically those that perform solvent mixing, have been identified as major sources of hazardous air pollutants (HAP) including n-hexane, toluene, and trichloroethylene. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lungs, skin, mucous membranes, and effects on the central nervous system, liver, and kidney.

These proposed standards would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). Implementation of these proposed standards will reduce HAP emissions by approximately 340 tons per year (tpy).

DATES: *Comments.* Submit comments on or before December 3, 2001.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by October 24, 2001, a public hearing will be held on November 5, 2001.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–57. U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–57, U.S. EPA, Room Number M1500, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC beginning at 10 a.m., or at an alternate site nearby.

Docket. Docket No. A–97–57 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed rule, contact Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2364, electronic mail address: cavender.kevin@epa.gov. For questions about the public hearing, contact Cassie Posey, Metals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0069, electronic mail address: posey.cassie@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect'' version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–97–57. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Kevin Cavender, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Cassie Posey at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also contact Ms. Posey to verify the time, date, and location of the hearing. The address, telephone number, and e-mail address for Ms. Posey are listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. If a public hearing is held, it will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket reflects the full administrative record for this action and includes all the information relied upon by EPA in the development of this proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS	Examples of regulated entities
Industry	33634, 327999, 333613	Friction materials manufacturing facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.9485 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for the development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What source category is affected by this proposed rule?
D. What is friction materials manufacturing?
E. What HAP are emitted from friction materials manufacturing facilities?
F. What are the health effects associated with emissions from friction materials manufacturing facilities?
II. Summary of the Proposed Rule
A. What is the affected source?
B. What is the emission limitation?
C. What are the initial and continuous compliance requirements?
D. What are the notification, recordkeeping, and reporting requirements?
E. What are the compliance deadlines?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category?
B. How did we select the affected source?
C. How did we select the pollutants?
D. How did we determine the basis and level of the proposed emission limitation for solvent mixers?
E. How did we select the initial and continuous compliance requirements?
F. How did we select the notification, recordkeeping and reporting requirements?
IV. Summary of Environmental, Energy and Economic Impacts
A. What are the air emission impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air quality environmental and energy impacts?
V. Solicitation of Comments and Public Participation
VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act of 1995
I. Executive Order 13211 (Energy Effects)

I. Background

A. What Is the Source of Authority for the Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed NESHAP is friction materials manufacturing. Major sources are those that emit or have the potential to emit at least 10 tpy of any single HAP or 25 tpy of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

The NESHAP for new and existing sources developed under section 112 must reflect the maximum degree of reduction of HAP emissions that is achievable taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental benefits, and energy requirements. Emission reductions may be accomplished through promulgation of emission standards under section 112(d). These may include, but are not limited to:

- Reducing the volume of emissions of HAP, or eliminating the emissions through process changes, substitution of materials, or other modifications;
- Enclosing systems or processes to eliminate emissions;
- Collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point;
- Design, equipment, work practice, operational standards, or any combination thereof, if it is not feasible to prescribe or enforce an emission standard (including requirements for operator training or certification); or
- A combination of the above.

Section 112 requires us to establish a minimum baseline or ''floor'' for standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources can be less stringent than the standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources. For categories and subcategories with fewer than 30 sources, the standards cannot be less stringent than the average emission limitation achieved by the best-performing five sources.

Section 112(d) allows us to distinguish among classes, types, and sizes of sources within a category or subcategory. For example, we can establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class.

For NESHAP developed to date, we have used several different approaches to determine the MACT floor for individual source categories depending on the type, quality, and applicability of available data. These approaches include determining a MACT floor based on: (1) emissions test data that characterize actual HAP emissions from presently controlled sources included in the source category; (2) existing federally-enforceable emission limitations specified in air regulations and facility air permits applicable to the individual sources comprising the source category; and (3) application of a specific type of control technology for air emissions currently being used by sources in the source category or by sources with similar pollutant stream characteristics.

To select the MACT standard, we evaluate several alternatives (which may be different levels of emission control or different levels of applicability or both) to select the one that best reflects the appropriate MACT level. The selected alternative may be more stringent than the MACT floor, but the control level selected must be technically achievable. In selecting an alternative, we consider the achievable HAP emission reduction (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emission reduction without

unreasonable economic or other impacts. The regulatory alternatives selected for new and existing sources may be different, and separate regulatory decisions may be made for new and existing sources.

We then translate the selected regulatory alternative into a proposed rule. The public is invited to comment on the proposal during the public comment period. Based on an evaluation of these comments, we reach a final decision and promulgate the standard.

C. What Source Category Is Affected by This Proposed Rule?

Section 112 of the CAA requires us to list all categories of major HAP emitting sources and to promulgate regulations for their control. An initial list of source categories and accompanying schedules for regulation were published on December 3, 1993 (58 FR 63941). Friction materials manufacturing was not among the initially listed source categories. A subsequent notice published on June 4, 1996 (61 FR 28197) added friction products manufacturing to the list of major source categories scheduled for regulation by November 15, 2000. The listing was based on information obtained in a 1992 survey of the industry from which we concluded that some facilities that manufacture friction products have the potential to be major sources of HAP emissions. Friction products manufacturing includes facilities that manufacture, assemble, or rebuild friction products such as brakes or clutches. Based on additional information obtained during the development of this proposed rule, we have determined that only facilities that manufacture friction materials have the potential to emit HAP at major source levels. As such, this proposed rule will affect only friction materials manufacturers. The next revision to the source category list under section 112, which is published in the **Federal Register,** will remove the friction products manufacturing source category and add the friction material manufacturing source category.

D. What Is Friction Materials Manufacturing?

Friction materials manufacturing is a subset of friction products manufacturing. Broadly speaking, the friction products manufacturing industry includes any facility that manufactures or re-manufactures friction products such as brakes and clutches. Friction products are used in a number of market segments, including automotive, aerospace, railroad, heavy equipment, industrial, appliance, and lawn and garden. We know of 147 domestic friction products manufacturing facilities. Of these, 16 only assemble new products, 78 rebuild or otherwise recondition products, and 53 manufacture friction materials (e.g., brake and clutch linings). Assemblers purchase new friction materials from other manufacturers and attach it to new backing plates or shoes. Rebuilders purchase new friction materials from other manufacturers and attach it to reconditioned brake shoes or clutch plates. None of these facilities manufacture friction materials and none are major sources of HAP. Consequently, none of these facilities would be regulated under today's proposed rule.

Friction materials manufacturers make brake and clutch linings and, in most cases, assemble finished products. They can be classified into three classes based on the friction materials manufactured: sintered material, carbon-based material, and resin-based material.

Two facilities manufacture sintered friction materials. Both use high temperature processes to fuse non-HAP metal and mineral ingredients into a consolidated product. Neither facility is believed to be a major source of HAP, and, therefore, neither would be regulated under today's proposal.

Four facilities manufacture carbon-based friction products in which carbon is impregnated into a synthetic mesh to create a friction material. Hydrogen cyanide is the only HAP known to be emitted in the process. All four existing facilities have federally enforceable control requirements that limit hydrogen cyanide emissions to well below the major source threshold of 10 tpy. In addition, we do not anticipate that any new carbon-based facilities will be built. As a result, manufacturers of carbon-based friction products will not be regulated under today's proposed rule.

Forty-seven facilities manufacture resin-based friction materials. At these facilities, friction ingredients are mixed with resins which, when cured, bind the friction ingredients together. In most cases, mixing can be done without the aid of a solvent. However, for some friction materials, solvents are needed to enhance mixing and as a process aid in later stages. Of the 47 facilities that manufacture resin-based friction materials, only four use solvents to mix friction materials. All four are believed to be major sources of HAP due to air releases of the solvents used. The HAP-containing solvents used include n-hexane, toluene, and trichloroethylene.

Based on our review, we believe that solvent mixing is the only significant HAP emission source associated with friction material manufacturing.[1] As such, today's proposed rule establishes emission limitations for HAP emissions only for solvent mixers at new and existing sources that manufacture resin-based friction materials.

The principal operations used in the manufacture of resin-based friction materials can be classified into four general areas: raw material preparation, forming, curing, and assembling and finishing.

In the raw material preparation area, raw materials (reinforcement material, property modifiers, resins, solvents, and other additives) are blended and made ready for subsequent processing. Process units in the raw material preparation area include mixers, granulators, and dryers. Mixing is accomplished in discrete batches. Double-arm mixers are the most common type of mixer used. A typical batch includes between 300 to 1000 pounds of friction ingredients and takes between 20 minutes and 1 hour to mix. Batches of mixed friction material may then be processed further through a granulator which extrudes the material through a ¼ to ½ inch die, and then cuts the extruded material into ½ to 1 inch lengths. Some facilities also dry the friction material after mixing, but before the forming step, to remove any remaining solvent from the material mix. The dryer is typically an indirect type which dries the material mix by contact and heat transfer through the dryer wall. Typical drying temperatures are on the order of 150 °F.

The blended and prepared friction material is then transferred from the raw material preparation area to the forming area, where the material is formed into shapes. Forming equipment includes extruders, roll machines, and hot presses. Extruders are used to form tapes and pellets of friction material. Pellets are formed by forcing the moist friction material through perforations in a metal die and cutting the continuously formed strands to a predetermined length. Tapes are formed by forcing the friction material through a metal die with an appropriately-shaped slot in a heated extruder head. Roll machines are used to form flat, pliable tapes, similar

[1] Two additional resin-based manufacturers are believed to be major sources. However, both are major due primarily to HAP emissions from ancillary surface coating and degreasing operations, which either are or will be regulated under other NESHAP. These two resin-based manufacturers have no solvent mixers, and as such, are not included in the MACT floor analysis for solvent mixers.

to those produced by an extruder, and are also used to produce wider sheets of friction material. The moist friction material is metered between a series of rollers which form a continuous strip of friction material with a preset width and thickness. Hot presses are used to form disc brake pucks, integrally-molded disc brake pads, brake segments, and brake blocks. Hot presses apply heat and pressure over time to consolidate the friction mix into a solid product. Premeasured quantities of friction mix are poured into each press cavity. As heat and pressure are applied, the material is partially cured.

After the friction shapes are formed, they are cured in a curing oven or post bake oven. Curing times and temperatures vary with product size and composition. Curing times range from 1 hour to 2 days, but typically run about 12 hours. Oven temperatures ramp up and then down over the curing cycle and range from 180 to 500 °F. Once the friction material is formed and cured, it is finished and subsequently assembled with some type of metal backing. Finishing operations bring the friction product to final specifications. These operations include machining, painting, and edge coding. Assembly operations include steel preparation (i.e, degreasing), adhesive application, oven bonding, riveting, and attachment of hardware (e.g., mounting brackets, wear sensors, and noise suppressors).

E. What HAP Are Emitted From Friction Materials Manufacturing Facilities?

The nature and quantity of HAP emissions from the manufacturing of friction materials is driven almost entirely by whether HAP containing solvents are used in mixing. The primary HAP emitted from the major source friction materials manufacturing facilities are HAP solvents from mixing operations. Currently, these include n-hexane, toluene, and trichloroethylene. The main sources of these HAP emissions are the solvent mixers themselves. Other potential sources of HAP solvent emissions include granulators, dryers, extruders, roll machines, hot presses, and ovens.

Emissions from mixers can occur as solvent is added to the mixer, during the mixing cycle, and as fugitive emissions when the mixed material is transferred from the mixer to the next and subsequent process operations. The type and quantity of organic HAP emissions from solvent mixers varies depending on the type of solvent used, the amount of solvent used per batch, the configuration of the mixer, and the presence or absence of a solvent recovery system. Three of the seven solvent mixers are equipped with solvent recovery systems designed to minimize HAP emissions and to reclaim solvent for reuse. For these mixers, the solvent is removed from the mixed material by vacuum evaporation and collected in either a condenser or a carbon adsorber. The reclaimed solvent is recycled and reused in the process or sold as reclaimed solvent.

Residual solvent that is not recovered or emitted at the solvent mixer can be emitted in subsequent processes as the friction material is processed through extruders, roll machines, granulators, dryers, hot presses, and ovens. The potential for emissions from these downstream processes is proportional to the quantity of residual solvent retained in the friction material after mixing.

Small amounts of phenol and formaldehyde (HAP components of phenolic resins) are emitted from hot presses and curing ovens or otherwise subject to methods of emission reductions. At the four major HAP sources, phenol and formaldehyde emissions account for less than 5 percent of the total HAP emitted. None of the existing hot presses or curing ovens at the four major sources are equipped with HAP emission controls. Available test data indicate that the phenol and formaldehyde emissions are on the order of 5 parts per million (ppm) or less, which is well below the level which can effectively be controlled by add on controls or any other methods of emissions reductions.

F. What Are the Health Effects Associated With Emissions From Friction Materials Manufacturing Facilities?

The primary HAP that would be addressed by this proposed rule include n-hexane, toluene, and trichloroethylene. Each are associated with a variety of adverse health effects, including chronic health disorders (e.g., reproductive and developmental effects, and effects on the central nervous system (CNS)), and acute health disorders (e.g., irritation of the lung, skin, and mucus membranes and effects on the CNS, liver, and kidneys).

Acute inhalation exposure of humans to high levels of hexane causes mild CNS effects, including dizziness, giddiness, slight nausea, and headache. Chronic exposure to hexane in air causes numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. One study reported testicular damage in rats exposed to hexane through inhalation. No information is available on the carcinogenic effects of hexane in humans or animals. We have classified hexane in Group D, not classifiable as to human carcinogenicity.

Acute and chronic inhalation exposure to trichloroethylene can affect the human CNS, producing symptoms such as dizziness, headache, confusion, euphoria, facial numbness, and weakness. High, short-term exposures to humans by inhalation have also been associated with effects on the liver, kidneys, gastrointestinal system, and skin. Human evidence is not adequate to establish a causal link between trichloroethylene exposure and cancer, but animal inhalation studies have reported increases in lung, liver, and testicular tumors. We have classified trichloroethylene as intermediate between probable and possible human carcinogen (Group B/C). We are currently reassessing its potential carcinogenicity.

Acute inhalation of toluene by humans may cause effects to the CNS, such as fatigue, sleepiness, headache, and nausea, as well as irregular heartbeat. Adverse CNS effects have been reported in chronic abusers exposed to high levels of toluene. Symptoms include tremors, decreased brain size, involuntary eye movements, and impaired speech, hearing, and vision. Chronic (long-term) inhalation exposure of humans to lower levels of toluene also causes irritation of the upper respiratory tract, eye irritation, sore throat, nausea, dizziness, headaches, and difficulty with sleep. Studies of children whose mothers were exposed to toluene by inhalation or mixed solvents during pregnancy have reported CNS problems, facial and limb abnormalities, and delayed development. However, these effects may not be attributable to toluene alone. We have classified toluene in Group D, not classifiable as to human carcinogenicity.

II. Summary of the Proposed Rule

A. What Is the Affected Source?

The affected source is each existing and new solvent mixer at a friction materials manufacturing facility that is, or is part of, a major source of HAP emissions. A new affected source is one constructed or reconstructed after October 4, 2001. An existing affected source is one constructed or reconstructed on or before October 4, 2001.

B. What Is the Emission Limitation?

The proposed rule would require owners and operators of both new and existing affected solvent mixers to limit emissions of total organic HAP discharged to the atmosphere to 15

percent or less of that loaded into an affected solvent mixer, based on a 7-day block average.

C. What Are the Initial and Continuous Compliance Requirements?

Initial compliance would be determined by measuring and recording the weight of solvent added to each affected mixer and the weight of solvent recovered for each mix batch over the first 7 consecutive days after the compliance date. Initial compliance is demonstrated if the average amount of solvent discharged to the atmosphere recorded for each mix batch over the 7-day period does not exceed 15 percent. The proposed rule also includes performance specifications for the weight measurement device as well as procedures for conducting the measurements and computing the results. To demonstrate continuous compliance, owners and operators would be required to continue to weigh and record the percent of solvent emitted for each mix batch and to maintain each 7-day block average at or below 15 percent.

D. What Are the Notification, Recordkeeping, and Reporting Requirements?

The proposed notification, recordkeeping, and reporting requirements rely on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 1 in the proposed rule shows each of the requirements in the General Provisions (§§ 63.2 through 63.15) and whether they apply.

Under today's proposed rule, owners or operators subject to these standards must submit each of the notifications contained in the General Provisions that applies to them. These include an initial notification of applicability, which for existing sources is required within 120 days of the promulgation date; and a notification of compliance status, which must be submitted before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

In addition, owners or operators subject to these standards would need to prepare and maintain all records required by the General Provisions to document compliance with each enforceable provision of the proposed rule. Records needed to show continuous compliance with the emission limitation in the proposed rule are to be kept for 5 years.

We are also requiring owners and operators of all affected sources to submit semiannual compliance reports which highlight any deviations from the emission limitation and other provisions of the proposed rule. Each report would be due no later than 30 days after the end of the reporting period. If no deviations occurred, owners and operators are only required to submit a statement that there were no deviations from the emission limitation during the reporting period. More detailed information would be required, as specified in the proposed rule, if a deviation occurred or there was a startup, shutdown, or malfunction event. Owners and operators must submit an immediate report if they undertake actions during a startup, shutdown, or malfunction that are inconsistent with the procedures in their approved startup, shutdown, and malfunction plan, required by § 63.6(e)(3) of the General Provisions. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to our satisfaction that the affected source was operating in accordance with the startup, shutdown, and malfunction plan.

E. What Are the Compliance Deadlines?

Existing sources must comply within 2 years of the date of publication of the final rule. New or reconstructed sources must comply at startup, or upon the date of publication of the final rule, depending on their startup date.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category?

We added the friction products manufacturing source category to the list of major sources to be regulated under Title III on on June 4, 1996 (61 FR 28197) because we believed that a number of friction products manufacturers had the potential to emit HAP at major source levels. Friction products manufacturing includes facilities that manufacture, assemble, or rebuild friction products such as brakes or clutches. Based on additional information obtained during the development of this proposed rule, we have determined that only facilities that manufacture friction materials have the potential to emit HAP at major source levels. As such, we have selected friction materials manufacturing as the source category to regulate.

B. How Did We Select the Affected Source?

Affected source means the collection of equipment and processes in the source category or subcategory to which the emission limitation and other regulatory requirements apply. The affected source may be the same collection of equipment and processes as the source category or it may be a subset of the source category. For each rule, we must decide which individual pieces of equipment and processes warrant separate standards in the context of the CAA section 112 requirements and the industry operating practices.

We considered two approaches for designating the affected source for friction materials manufacturing—the entire facility or individual emission sources. We concluded that designating individual solvent mixers as the affected source is the most appropriate approach. The solvent mixer is the only significant source of HAP emissions at the four major sources, and controlling individual solvent mixers is consistent with the approach to control applied at all four major sources. The affected source definition we selected is the same for both new and existing sources. We decided not to identify hot presses and curing ovens as affected sources because HAP emissions from these sources are very low, none of the existing hot presses and curing ovens are equipped with HAP controls, and we do not believe that hot presses and curing ovens at friction materials manufacturers can effectively be controlled by add on controls.

C. How Did We Select the Pollutants?

The HAP solvents currently used at the friction materials manufacturing facilities estimated to be major sources include n-hexane, toluene, and trichloroethylene. Whether these specific solvents will continue to be used or whether they might in the future be replaced with other HAP solvents is uncertain. As such, we believe that establishing separate standards for individual solvents would be unwise. Consequently, we have selected HAP solvent emissions as a surrogate for the individual HAP compounds n-hexane, toluene, and trichloroethylene.

D. How Did We Determine the Basis and Level of the Proposed Emission Limitation for Solvent Mixers?

As reported previously, we surveyed the entire friction materials manufacturing industry and determined that four facilities with solvent mixers emit HAP in excess of the major source levels. Combined, these four facilities (referred to here as Plants A, B, C, and D) operate a total of seven solvent mixers, of which three are equipped with air pollution controls, and four have no control.

Plant A operates one solvent mixer and uses toluene as the solvent.

According to information on air releases reported by the plant to the 1998 Toxics Release Inventory (TRI), air emissions of toluene are on the order of 45 tons per year. After mixing, solvent is drawn out of the mixer under a strong vacuum. Data collected by plant personnel indicate that typically more than 95 percent of the solvent is removed from the mixed material, with less than 5 percent remaining in the mix. The evacuated solvent vapors are then condensed in a non-contact condenser, which cools the vapors to 32 °F. Liquid condensate is collected and recycled to the process, and uncondensed vapor is exhausted to the atmosphere through a stack.

Plant A has a State operating permit which requires that the facility collect at least 85 percent (by weight) of the solvent that is added to the mixer, averaged over a calender week. The percent solvent recovery is determined for each individual mix batch by weighing the amount of solvent loaded into the mixer and weighing the amount of solvent recovered by the condenser. Plant A began collecting solvent recovery data for each batch in January 1999. We reviewed the solvent recovery records from January 1999 through October 1999 and found that the 85 percent solvent recovery limit has been consistently achieved on a weekly, or 7-day block average, basis.

Plant B has four solvent mixers that use n-hexane as the solvent. Again, based on self-reported emissions data to TRI for 1998, Plant B emits approximately 450 tons of hexane annually. Three of the four mixers have no air pollution controls. All of the solvent added to these mixers is emitted to the atmosphere. The fourth mixer has a solvent recovery system similar to the one described for Plant A. Solvent is drawn out of the mixed material by vacuum. The solvent vapors are then collected by a non-contact condenser, which cools the solvent vapor to 60°F. Once a quarter, Plant B performs a solvent mass balance for one batch to evaluate the performance of the solvent recovery system. The amount of solvent added to the mixer is measured using a calibrated flow meter and the amount of solvent recovered by the condenser is weighed. The results of these measurements indicate that approximately 70 percent of the solvent is recovered by the solvent recovery system on average. A moisture analysis is also performed on a sample of the mixed material to determine how much solvent remains in the mix. Using these data and the overall system efficiency, plant personnel have determined that approximately 90 percent of the solvent is removed from the mix by the solvent recovery system, and that the condenser removes approximately 80 percent of the solvent vapors.

Plant C has one solvent mixer that uses trichloroethylene as the solvent. Based on the self-reported emissions data to TRI for 1998, Plant C emits approximately 30 tons of trichloroethylene per year. As with the other two controlled mixers, solvent is removed from the mixer under vacuum. No data are available on how much of the solvent is removed from the mixed friction material by the vacuum system. The solvent vapors are combined with the emissions from a solvent degreaser, and the comingled vapors are collected in an activated-carbon adsorber. The adsorbed solvent is recovered daily by steam stripping the adsorber bed, and the recovered solvent is sold. Performance data based on a single inlet/outlet emissions test conducted in 1996 indicate that the subject adsorber is capable of achieving 94 percent control. It should be noted that control efficiency does not equate to solvent recovery since it does not account for the residual solvent content remaining in the mixed material. If one assumes that the residual solvent content is similar to that achieved at Plants A and B (i.e., between 5 and 10 percent), the corresponding percent of solvent recovered would be on the order of 85 and 90 percent.

Plant D operates one solvent mixer that uses toluene as the solvent. Based on the self-reported emissions data to TRI for 1998, Plant D emits about 40 tons of toluene annually. Plant D has no air pollution controls on its mixer, and 100 percent of the solvent used is emitted to the atmosphere.

Selection of MACT

We have determined that the MACT floor for existing mixers is a solvent recovery system with a 70 percent solvent recovery efficiency, and the MACT floor for new mixers is a solvent recovery system with a 85 percent solvent recovery efficiency. We have also determined that it is both technically and economically feasible for existing mixers to achieve better than the floor level of control and are, therefore, establishing MACT for both new and existing solvent mixers at 85 percent solvent recovery efficiency. The following paragraphs describe how we determined the MACT floors, and our rationale for going beyond the floor for existing mixers.

Because there are only seven solvent mixers (fewer than 30 sources), the MACT floor for existing solvent mixers is based on the best performing five sources. The available information does not allow for a floor calculation based on actual emissions data or State limits. However, ranking the sources by the estimated performance of the control technology applied allows for a floor determination based on the median of the best performing five sources, i.e., the third best performing source.

Each of the three mixers with control is equipped with a solvent recovery system comprised of two components: a vacuum system to remove the solvent from the mixed material, and a control device that recovers the solvent from the exhaust. The overall performance of these systems is determined by the performances of the individual components, i.e., the efficiency of the vacuum system at removing solvent from the mixed material, and the efficiency of the control device in removing the solvent vapors from the vacuum exhaust.

Plants A and B both use a condenser to recover the solvent vapors. Based on the available data, Plant A's recovery system performs better than the recovery system used at Plant B. Plant A's vacuum system removes 95 percent of the toluene from the mixer, and the condenser removes 90 percent of the solvent vapor, resulting in an overall solvent recovery efficiency of 85 percent. Plant B's vacuum system is estimated to remove 90 percent of the hexane from the mixer, and the condenser removes 80 percent of the hexane vapors from the vacuum exhaust, resulting in an overall solvent recovery efficiency of 70 percent.

Plant C uses a carbon adsorber to recover the trichloroethylene solvent vapors contained in the vacuum exhaust coming from the mixer. The 94 percent control efficiency estimated for the carbon adsorber is the highest of the three control devices applied. However, as stated previously, we have no information from which to assess the effectiveness of the vacuum system at removing the solvent from the mixed material. Without this information, we cannot determine the overall solvent recovery efficiency achieved by the vacuum system and carbon adsorber at Plant C. However, we believe that it is reasonable to assume that the vacuum system at Plant C is comparable to the systems at Plants A and B. Therefore, for the purpose of determining the MACT floor, we have assumed that the vacuum system at Plant C is 90 percent efficient at removing the solvent from the mixed material (the lesser of the two known efficiencies), and have assigned an 85 percent solvent recovery efficiency for the overall system (vacuum system and carbon adsorber). Our assumption

regarding Plant C's vacuum system efficiency does not impact the MACT determination for existing sources since the floor, as selected below, is ultimately based on Plant B, and since we have decided to establish MACT at a level beyond the floor.

The ranking of the five best sources for purposes of the floor determination is as follows: 85 percent for Plants A and C, 70 percent for Plant B, and zero percent recovery for any two of the remaining mixers. The third best performing source and, thus, the MACT floor for existing solvent mixers is the mixer at Plant B with 70 percent solvent recovery. The MACT floor for new mixers is based on the best performing solvent recovery system. We have determined that Plant A has the best performing solvent recovery system and have set the MACT floor for new mixers at an 85 percent solvent recovery efficiency.

Next we evaluated options that would be more stringent than the floor. Clearly requiring existing mixers to meet an 85 percent solvent recovery efficiency is an option for existing mixers. We looked at the volatility of the three different solvents used at the existing solvent mixers to determine if the volatility of the solvents could limit the vacuum system efficiency such that for certain solvents an 85 percent solvent recovery efficiency could not be achieved. Vacuum systems remove solvent from the mixed material by evaporation at low pressure. Consequently, the higher the volatility of the solvent, the more easily it can be removed by a vacuum system. Of the three solvents used, hexane is the most volatile, while toluene is the least volatile. Based on the available data, Plant A's vacuum system efficiency of 95 percent is the best of the existing systems. Since Plant A also uses the least volatile solvent (i.e., toluene) it is clear that a vacuum system efficiency of 95 percent can be achieved for all three of the solvents used at the existing plants.

We then evaluated the condenser used at Plant B, the poorer performer of the sources with condensers, to determine if improvements to condenser efficiency are possible. The key parameter that determines condenser performance for a given solvent is the outlet temperature of the condenser. The lower the outlet temperature of the condenser, the more solvent will be condensed, and the higher the condenser efficiency will be. For Plant B, the condenser outlet temperature is 60°F. This compares to an outlet temperature of 32°F at Plant A. Condenser outlet temperatures of 32°F can be obtained with either a glycol-cooled condenser, or a Freon-cooled condenser. The vapor pressure of hexane, the solvent used at Plant B, is estimated to be approximately 100 millimeters of mercury (mm of Hg) at 60°F. At 32°F, the vapor pressure of hexane is estimated to be approximately 50 mm of Hg. This indicates that the penetration (the amount of solvent that is not condensed) would be halved by lowering the condenser outlet temperature at Plant B from 60°F degrees to 32°F. Since the current condenser is estimated to be 80 percent efficient, we would predict that a condenser with a 32°F outlet temperature would achieve 90 percent efficiency for this gas stream. If Plant B were to install both an improved vacuum system and an improved condenser, we predict the overall solvent recovery would be 85 percent ($0.95 \times 0.90 \times 100$ percent = 85 percent). Based on the above analysis, we believe that it is technically feasible to achieve 85 percent solvent recovery on each existing solvent mixer used at friction materials manufacturing facilities.

We also believe it is economically feasible to achieve 85 percent solvent recovery on each existing solvent mixer. The incremental costs to install and operate a solvent recovery system that achieves 85 percent over that of a system that would achieve 70 percent are minimal. Nationwide capital for the above-the-floor alternative increases by $92,000 over the floor level. However, because more solvent is recovered under the above-the-floor alternative, the annual costs decrease by $29,000 per year.

We also evaluated and rejected an option that would prohibit the use of HAP solvents altogether. The HAP solvent usage has declined significantly as friction materials manufacturers develop formulations and processes that either use non-HAP solvents or need no solvents in the mixing process (i.e., dry mixing). Personnel at Plants B and C are actively working to identify alternatives to the HAP solvent they currently use. Plant B uses a dry mixer to mix many of the formulations it currently makes, but must use hexane to mix those formulations where the dry mixing process cannot meet the performance characteristics needed. They have also investigated several non-HAP solvents, but have not yet identified an acceptable alternative to hexane. Plant C uses non-HAP solvents to mix many of the friction materials they manufacture, but still have a number of formulations that require the use of trichloroethylene to achieve the necessary characteristics. While it may be possible in the future to eliminate the use of HAP solvents from all friction materials manufacturing, we believe it is not feasible currently to eliminate HAP solvent usage from all friction materials manufacturing.

Selection of the Standards

The CAA requires us to set numerical emission limitations unless the setting or enforcement of a numerical emission limitation is infeasible, in which case a design, equipment, work practice, or operational standard can be set. Consequently, we have selected a format for the standards that expresses the goal of 85 percent solvent recovery as an emission limit based on the amount of solvent loaded into the mixer and the amount recovered. Specifically, the proposed standards would limit the HAP solvent emissions to the atmosphere to no more than 15 percent of that loaded into the solvent mixer.

We also evaluated several averaging times to determine an appropriate averaging time for the standards. We determined that a long averaging time (such as a 30-day or annual average) would not be appropriate because it would allow for long periods of under performance by the solvent recovery system. In addition, one deviation from a 30-day or annual average would put the plant at risk of being determined to be out of compliance for the entire period. We determined that requiring compliance on a per batch basis (i.e. no averaging) would also be inappropriate since it would not accommodate normal variability in the residual solvent requirements for different product mixes. The use of a 7-day block average provides time to detect and correct problems (e.g., individual mix batches not achieving the emission limitation) without the risk of the longer averaging periods. A 7-day block average is also consistent with the existing State operating permit requirements for Plant A.

E. How Did We Select the Initial and Continuous Compliance Requirements?

We selected the initial and continuous compliance requirements based on a combination of the generic requirements in the General Provisions (subpart A, 40 CFR part 63) and specific requirements tailored to the friction materials manufacturing source category.

We are requiring owners or operators of all affected sources to demonstrate initial compliance with the emission limitation for solvent mixers within 2 years of the date of publication of the final rule. We feel that 2 years should provide sufficient time for the affected facilities to purchase and install control

equipment capable of meeting the standards. We feel that a compliance date of less than 2 years may not be long enough due to the potential need for process modifications and product testing to accommodate solvent recovery.

To demonstrate initial compliance with the emission limitation for solvent mixers, owners or operators would be required to demonstrate that the percent of HAP solvent discharged to the atmosphere during the first 7 days after the compliance date, expressed as a 7-day block average, does not exceed 15 percent of that loaded into an affected solvent mixer. In order to demonstrate continuous compliance, owners and operators would be required to show on an ongoing basis that the percent of HAP solvent discharged to the atmosphere for each successive 7-day period does not average more than 15 percent of that loaded into an affected mixer. We selected a 7-day block averaging period as part of the standards to accommodate necessary variations in residual solvent in some product mixes.

Testing requirements include the weighing of solvent loaded into each affected solvent mixer and the weighing of solvent recovered for each mix batch. Compliance is then determined against the average recovery achieved for each mix batch over each 7-day block period. Requirements of the weight measurement device include a minimum accuracy and requirements for calibration and inspection.

We selected weighing as the means for determining compliance based on our strong belief that each affected facility will elect to comply with the HAP solvent emission limit by installing and operating a condenser-based solvent recovery system over other control measures such as carbon adsorption or incineration. Weighing precludes the need for costly emissions testing and provides continuing compliance assurance on a weekly basis. If an owner or operator elects to use a control device other than a condenser-based solvent recovery system, they would be allowed to petition the Administrator for approval to use an alternative means of demonstrating initial and continuous compliance with the emission limitation for solvent mixers.

F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

Generally, we selected the notification, recordkeeping, and reporting requirements consistent with those contained in the subpart A General Provisions. We deleted, however, notifications, records, and reports that relate to performance tests, continuous emissions monitoring systems (CEMS), continuous opacity monitoring systems (COMS), opacity observations or other visible emission (VE) observations since none of these requirements are relevant to the proposed rule. The records and reports required by the proposed rule are the minimum needed to demonstrate continuous compliance.

IV. Summary of Environmental, Energy and Economic Impacts

A. What Are the Air Emission Impacts?

Estimates of organic HAP emissions from the use of solvents are based on a mass balance using solvent usage data collected during the industry survey, estimates of solvent recovery efficiencies for existing controls, and the proposed solvent emission limitation of 15 percent or 85 percent recovery. Four currently uncontrolled mixers will need to be fitted with a solvent recovery system, and the solvent recovery system on one existing mixer will need to be upgraded. The remaining two mixers currently meet the proposed standards and as such should require no additional upgrades. We estimate that the proposed rule would reduce organic HAP emissions by approximately 340 tpy from a baseline level of about 670 tpy. Emissions of volatile organic compounds (VOC) would also be reduced by 340 tpy because these HAP are also VOC.

B. What Are the Cost Impacts?

We obtained process and emissions data from the facilities with the best-controlled solvent mixers and incorporated these data into the control cost algorithms for condensers in the ''OAQPS Control Cost Manual'' (EPA 450/3–90–006). We then applied these costs to those facilities that we project would be impacted by the proposed standards. As stated above, we project that five mixers located at two facilities would be impacted by the proposed rule. Four existing mixers would need to be equipped with solvent recovery systems, and the existing solvent recovery system on a fifth mixer would need to be upgraded to meet the proposed standards. Both facilities would incur capital costs to install condensers to meet the proposed standards, as well as annual costs to operate and maintain the condensers. Monitoring is also an important component of MACT and the cost estimate. We expect that all four facilities affected by today's proposed rule will incur some additional yearly costs due to the monitoring, recordkeeping, and reporting requirements of this proposed rule.

Implementation of the control and monitoring requirements is expected to result in a nationwide capital cost of about $253,000, with a total annualized cost (without recovery credits) of approximately $206,000 per year. Nationwide total annualized cost, including credits for recovered solvent, is estimated to be about $43,000 per year.

C. What Are the Economic Impacts?

Based on the control cost estimates provided above, we believe the economic impacts associated with this proposed rule will be negligible. In 1992, there were 53 facilities manufacturing friction materials. Of these 53 facilities, four are affected by the proposed rule and will incur control and monitoring costs. The total annualized cost of $206,000 per year (without recovery credits) is much less than 1 percent of industry revenues. When we consider the solvent recovery credits along with control technology costs, the total economic impact of this proposed rule is a cost to the industry of $43,000 per year. As a result, the impacts of this rule are substantivally less than 1 percent of total revenues and is not significant enough to alter the market price for friction materials.

D. What Are the Non-Air Quality Environmental and Energy Impacts?

Indirect air impacts of today's proposed rule would result from increased electricity usage associated with operation of control devices (i.e., condensers) installed to meet the proposed emission limitation. Assuming that plants will purchase electricity from a power plant, we estimate that the proposed rule would increase secondary emissions of criteria pollutants from power plants by less than 0.5 tpy. These criteria pollutants include particulate matter, sulfur dioxide, nitrogen oxides, and carbon monoxide. The overall energy demand is expected to increase by about 340 million British thermal units per year (MMBtu/yr) nationwide under the proposed rule. This increase in energy demand is based on the electricity required to operate the vacuum and condenser systems needed to comply with the proposed rule.

Because impacted facilities are expected to reuse or sell the solvent recovered by the condensers, we do not anticipate any significant wastewater or solid waste impacts as a result of today's proposed rule.

V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of this proposal from all interested parties. You need to submit full supporting data and detailed analyses with your comments to allow us to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. A–97–57 (see **ADDRESSES**).

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the rule requirements will not supercede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate friction material manufacturing facilities. Thus, Executive Order 13175 does not apply to this proposed rule.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal

governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in estimated costs of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of this proposed rule for any year has been estimated to be less than $206,000. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.

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

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business that has no more than 500 employees for NAICS codes 327999 and 333613 or no more than 750 employees for SIC code 33634; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that only one company meets one of the definitions of small entity—a small business that has no more than 500 employees for NAICS code 333613. This company owns only one of the four facilities subject to today's proposed rule. The mixer at this facility is equipped with a solvent recovery system capable of meeting the requirements of this proposed rule. As such, the additional burden to this facility as a result of this proposed rule would be $21,000 per year for recordkeeping and reporting costs associated with demonstrating continued compliance with the proposed rule. There are several firms subject to today's proposed rule whose costs will be a greater percentage of sales than this small business.

Although this proposed rule will not have a significant impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. We held a number of meetings with industry in which the one small business participated, and we visited the one small business impacted by this proposed rule. The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 2025.01), and you may obtain a copy from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460; by email at *farmer.sandy@epa.gov;* or by calling (202) 260–2740. You may also download a copy off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the NESHAP General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to be 577 labor hours per year, at a total annual cost of $26,657. This burden estimate includes the cost to install and operate the weight measurement device; one-time submission of a startup, shutdown, and malfunction plan, with semiannual reports for any event when the procedures in the plan were not followed; semiannual compliance reports; maintenance inspections; notifications; and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $15,913, with operation and maintenance costs of $261/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the 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 existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection

techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 4, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by November 5, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) Public Law No. 104–113 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This rulemaking involves a technical standard. The EPA is proposing test methods based on the weighing portion of EPA Method 28 (section 7.1) for weighing of recovered solvent. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards that could be used in addition to this EPA method.

The search for emissions measurement procedures identified two voluntary consensus standards potentially applicable to this proposed rule. The EPA determined these two standards identified for measuring recovered solvent on a scale were impractical alternatives to the EPA test methods for the purposes of this proposed rule. Therefore, EPA does not intend to adopt these standards for this purpose.

The voluntary consensus standard ASTM E319–85 (Reapproved 1997), ''Standard Practice for the Evaluation of Single-Pan Mechanical Balances,'' is impractical for the purposes of this rulemaking primarily because this standard is not a complete weighing procedure since it does not include a pretest procedure.

The voluntary consensus standard ASME Power Test Codes, ''Supplement on Instruments and Apparatus, Part 5, Measurement of Quantity of Materials, Chapter 1, Weighing Scales,'' is impractical for the purposes of this rulemaking because it does not specify the number of initial calibration weights to be used nor a specific pretest weight procedure.

Section 63.9525 to proposed subpart QQQQQ lists the testing procedures included in this proposed rule. Under § 63.8 of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

I. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

We welcome comment on this aspect of the proposed rulemaking and, specifically, invite the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this proposed rule.

List of Subjects in 40 CFR Part 63

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

Dated: September 28, 2001.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is proposed to be amended by adding subpart QQQQQ to read as follows:

Subpart QQQQQ—National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

Sec.

What This Subpart Covers

63.9480 What is the purpose of this subpart?
63.9485 Am I subject to this subpart?
63.9490 What parts of my plant does this subpart cover?
63.9495 When do I have to comply with this subpart?

Emission Limitation

63.9500 What emission limitation must I meet?

General Compliance Requirements

63.9505 What are my general requirements for complying with this subpart?

Initial Compliance Demonstration Requirements

63.9510 By what date must I conduct my initial compliance demonstration?
63.9515 How do I demonstrate initial compliance with the emission limitation that applies to me?
63.9520 What procedures must I use to demonstrate initial compliance?
63.9525 What are the installation, operation, and maintenance requirements for my weight measurement device?

Continuous Compliance Requirements

63.9530 How do I demonstrate continuous compliance with the emission limitation that applies to me?

Notifications, Reports, and Records

63.9535 What notifications must I submit and when?
63.9540 What reports must I submit and when?
63.9545 What records must I keep?
63.9550 In what form and how long must I keep my records?

Other Requirements and Information

63.9555 What parts of the General Provisions apply to me?
63.9560 Who implements and enforces this subpart?
63.9565 What definitions apply to this subpart?
63.9570 How do I apply for alternative compliance requirements?
63.9571–63.9579 [Reserved]

Table

Table 1 to Subpart QQQQQ—Applicability of General Provisions to Subpart QQQQQ

Subpart QQQQQ—National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

What This Subpart Covers

§ 63.9480 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for friction materials manufacturing facilities that use a solvent-based process. This subpart also establishes requirements to demonstrate initial and continuous

compliance with all applicable emission limitations in this subpart.

§ 63.9485 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a friction materials manufacturing facility (as defined in § 63.9565) that is (or is part of) a major source of hazardous air pollutants (HAP) emissions on the first compliance date that applies to you. Your friction materials manufacturing facility is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

(b) The requirements in this subpart do not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act.

§ 63.9490 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at your friction materials manufacturing facility.

(b) The affected source covered by this subpart is each new, reconstructed, or existing solvent mixer (as defined in § 63.9565) at your friction materials manufacturing facility.

(c) A solvent mixer at your friction materials manufacturing facility is new if you commence construction of the solvent mixer after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. An affected source is reconstructed if it meets the definition of ''reconstruction'' in § 63.2, and reconstruction is commenced after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(d) A solvent mixer at your friction materials manufacturing facility is existing if it is not new or reconstructed.

§ 63.9495 When do I have to comply with this subpart?

(a) If you have an existing solvent mixer, you must comply with each of the requirements for existing sources no later than 2 years after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) If you have a new or reconstructed solvent mixer and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with the requirements for new and reconstructed sources by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have a new or reconstructed solvent mixer and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with the requirements for new and reconstructed sources upon initial startup.

(d) If your friction materials manufacturing facility is an area source that increases its emissions or its potential to emit such that it becomes a (or part of a) major source of HAP emissions, then paragraphs (d)(1) and (2) of this section apply.

(1) For any portion of the area source that becomes a new or reconstructed affected source, you must comply with the requirements for new and reconstructed upon startup or no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is later.

(2) For any portion of the area source that becomes an existing affected source, you must comply with the requirements for existing sources no later than 1 year after the area source becomes a major source or [DATE 2 YEARS FROM PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is later.

(e) You must meet the notification and schedule requirements in § 63.9535. Several of the notifications must be submitted before the compliance date for your affected source.

Emission Limitation

§ 63.9500 What emission limitation must I meet?

For each new, reconstructed, or existing solvent mixer at your friction materials manufacturing facility, you must limit HAP solvent emissions to the atmosphere to no more than 15 percent of that loaded into an affected solvent mixer, based on a 7-day block average.

General Compliance Requirements

§ 63.9505 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitation in this subpart at all times, except during periods of startup, shutdown, or malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Demonstration Requirements

§ 63.9510 By what date must I conduct my initial compliance demonstration?

(a) If you use a solvent recovery system, you must conduct your initial compliance demonstration within 7 calendar days after the compliance date that is specified for your source in § 63.9495.

(b) If you use a control device other than a solvent recovery system, you must comply with the provisions in § 63.9570.

§ 63.9515 How do I demonstrate initial compliance with the emission limitation that applies to me?

(a) You have demonstrated initial compliance for each solvent mixer subject to the emission limitation in § 63.9500 if the HAP solvent discharged to the atmosphere during the first 7 days after the compliance date, determined according to the provisions in § 63.9520, does not exceed a 7-day block average of 15 percent.

(b) You must submit a notification of compliance status containing the results of the initial compliance demonstration according to § 63.9535(d).

§ 63.9520 What procedures must I use to demonstrate initial compliance?

(a) If you use a solvent recovery system, you must use the procedures in paragraphs (a)(1) through (7) of this section to demonstrate initial compliance with the emission limitation in § 63.9500.

(1) Record the date and time of each mix batch.

(2) Record the identity of each mix batch using a unique batch ID, as defined in § 63.9565.

(3) Measure and record the weight of HAP solvent loaded into the solvent mixer for each mix batch.

(4) Measure and record the weight of HAP solvent recovered for each mix batch.

(5) Determine the percent of HAP solvent discharged to the atmosphere for each mix batch according to Equation 1 of this section as follows:

$$\%D_b = 100\% - \frac{S_{rec}}{S_{mix}}(100\%) \qquad \text{(Eq. 1)}$$

Where:

$\%D_b$ = Percent of HAP solvent discharged to the atmosphere for each mix batch, percent;

S_{rec} = Weight of HAP solvent recovered for each mix batch, lb;

S_{mix} = Weight of HAP solvent loaded into the solvent mixer for each mix batch, lb.

(6) Determine the 7-day block average percent of HAP solvent discharged to the atmosphere according to Equation 2 of this section as follows:

$$\%D_7 = \frac{1}{n}\sum_{i=1}^{n}\%D_b \qquad \text{(Eq. 2)}$$

Where:

$\%D_7$ = 7-day block average percent of HAP solvent discharged to the atmosphere, percent
i = mix batch
n = number of mix batches in 7-day block average

(7) Have valid data for at least 90 percent of the mix batches over the 7-day averaging period.

(b) If you use a control device other than a solvent recovery system, you may apply to EPA for approval to use an alternative method of demonstrating compliance with the emission limitation for solvent mixers in § 63.9500, as provided in § 63.9570.

§ 63.9525 What are the installation, operation, and maintenance requirements for my weight measurement device?

(a) If you use a solvent recovery system, you must install, operate, and maintain a weight measurement device to measure the weight of HAP solvent loaded into the solvent mixer and the weight of HAP solvent recovered for each mix batch.

(b) For each weight measurement device required by this section, you must develop and submit for approval a site-specific monitoring plan that addresses the requirements of paragraphs (b)(1) through (6) of this section:

(1) Installation of the weight measurement device;

(2) The minimum accuracy of the weight measurement device in pounds and as a percent of the average weight of solvent to be loaded into the solvent mixer;

(3) Site-specific procedures for how the measurements will be made;

(4) How the measurement data will be recorded, reduced, and stored;

(5) Procedures and acceptance criteria for calibration of the weight measurement device; and

(6) How the measurement device will be maintained including a routine maintenance schedule and spare parts inventory list.

(c) The site-specific monitoring plan required in paragraph (b) of this section must include, at a minimum, the requirements of paragraphs (c)(1) through (3) of this section:

(1) The weight measurement device must have a minimum accuracy of ±0.05 kilograms (±0.1 pounds) or ±1 percent of the average weight of solvent to be loaded into the solvent mixer, whichever is greater.

(2) An initial multi-point calibration of the weight measurement device must be made using 5 points spanning the expected range of weight measurements before the weight measurement device can be used. The manufacturer's calibration results can be used to meet this requirement.

(3) Once per day, a calibration audit must be made using a single Class F calibration weight that corresponds to 20 to 80 percent of the average weight of solvent to be loaded into the solvent mixer. If the weight measurement device cannot reproduce the value of the calibration weight within ±0.05 kilograms (0.1 pounds) or ±1 percent of the average weight of solvent to be loaded into the solvent mixer, whichever is greater, the scale must be recalibrated before use with at least five Class F calibration weights spanning the expected range of weight measurements.

(d) You must operate and maintain the weight measurement device according to the site-specific monitoring plan.

(e) You must maintain records of all maintenance activities, calibrations, and calibration audits.

Continuous Compliance Requirements

§ 63.9530 How do I demonstrate continuous compliance with the emission limitation that applies to me?

(a) If you use a solvent recovery system, you must demonstrate continuous compliance with the emission limitation for solvent mixers in § 63.9500 according to the provisions in paragraphs (a)(1) and (2) of this section.

(1) Except for during malfunctions of your weight measurement device and associated repairs, you must collect and reduce the information required in § 63.9520(a)(1) through (7) at all times that the affected source is operating and record all information needed to document conformance with these requirements.

(2) Maintain the 7-day block average percent of HAP solvent discharged to the atmosphere at or below 15 percent.

(b) If you use a control device other than a solvent recovery system, you must demonstrate continuous compliance with the emission limitation for solvent mixers in § 63.9500 according to the provisions in § 63.9570.

(c) You must report each instance in which you did not meet the emission limitation for solvent mixers in § 63.9500. This includes periods of startup, shutdown, or malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.9540.

(d) During periods of startup, shutdown, or malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9535 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.8(f)(4) and 63.9(b), (c), (d), and (h) that apply to you by the specified dates.

(b) If you use a control device other than a solvent recovery system, you must comply with the provisions in § 63.9570.

(c) As specified in § 63.9(b)(2), if you start up your affected source before [*DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*], you must submit your initial notification no later than 120 calendar days after [*DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].

(d) As specified in § 63.9(b)(3), if you start up your new affected source on or after [*DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*], you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(e) You must submit a notification of compliance status according to § 63.9(h)(2)(ii). You must submit the notification of compliance status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

§ 63.9540 What reports must I submit and when?

(a) Unless the Administrator has approved a different schedule, you must submit each semiannual compliance report according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9495 and ending on June 30 or December 31, whichever date comes first after the

compliance date that is specified for your source in § 63.9495.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71 of this chapter, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A) of this chapter, you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) Each compliance report must include the information in paragraphs (b)(1) through (3) of this section, and if applicable, paragraphs (b)(4) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with the official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the emission limitation for solvent mixers in § 63.9500, a statement that there were no deviations from the emission limitation during the reporting period.

(6) If there were no periods during which a monitoring system was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which a monitoring system was out-of-control during the reporting period.

(c) For each deviation from an emission limitation occurring at an affected source, you must include the information in paragraphs (b)(1) through (4) and (c)(1) and (2) of this section. This includes periods of startup, shutdown, or malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(d) If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(e) If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71 of this chapter, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A) of this chapter. If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A) of this chapter, and the compliance report includes all the required information concerning deviations from any emission limitation in this subpart, then submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements to your permitting authority.

§ 63.9545 What records must I keep?

(a) You must keep the records in paragraphs (a)(1) and (2) of this section that apply to you.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, or malfunction.

(b) You must keep the records required in § 63.9525 to show proper operation and maintenance of the weight measurement device.

(c) You must keep the records required in § 63.9530 to show continuous compliance with the emission limitation for solvent mixers in § 63.9500.

§ 63.9550 In what form and how long must I keep my records?

(a) You must keep your records in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.9555 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.9560 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local or tribal agencies are as follows:

(1) Approval of alternatives to the emission limitation in § 63.9500 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9565 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Batch ID means a unique identifier used to differentiate each individual mix batch.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limitation (including any operating limit);

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Friction ingredients means any of the components used in the manufacture of friction material, excluding the HAP solvent. Friction ingredients include, but are not limited to, reinforcement materials, property modifiers, resins, and other additives.

Friction materials manufacturing facility means a facility that manufactures friction materials using a solvent-based process. Friction materials are used in the manufacture of products used to accelerate or decelerate objects. Products that use friction materials include, but are not limited to, disc brake pucks, disc brake pads, brake linings, brake shoes, brake segments, brake blocks, brake discs, clutch facings, and clutches.

HAP solvent means a solvent that contains 10 percent or more of any one HAP, as listed in section 112(b) of the Clean Air Act, or any combination of HAP that is added to a solvent mixer. Examples include hexane, toluene, and trichloroethylene.

Initial startup means the first time that equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startups (as defined in this section) following malfunction or shutdowns or following changes in product or between batch operations.

Mix batch means the process of manufacturing each batch of friction materials in a solvent mixer.

Responsible official means responsible official as defined in § 63.2.

7-day block average means an averaging technique for a weekly compliance determination where the calculated values for percent HAP solvent discharged to the atmosphere are averaged together for all mix batches (for which there are valid data) in a 7-day block period according to the equation provided in § 63.9520(a)(6).

Solvent mixer means a mixer used in the friction materials manufacturing process in which HAP solvent is used as one of the ingredients. Trace amounts of HAP solvents in resins or other friction ingredients do not qualify mixers as solvent mixers.

Solvent recovery system means equipment used for the purpose of recovering the HAP solvent from the exhaust stream. An example of a solvent recovery system is a condenser.

Startup means bringing equipment online and starting the production process.

Startup, shutdown, and malfunction plan means a plan developed according to the provisions of § 63.6(e)(3).

§ 63.9570 How do I apply for alternative compliance requirements?

(a) If you use a control device other than a solvent recovery system, you may request approval to use an alternative method of demonstrating compliance with the emission limitation in § 63.9500 according to the procedures in this section.

(b) You can request approval to use an alternative method of demonstrating compliance in the initial notification for existing sources, the notification of construction or reconstruction for new sources, or at any time.

(c) You must submit a description of the proposed testing, monitoring, recordkeeping, and reporting that will be used and the proposed basis for demonstrating compliance.

(1) If you have not previously performed testing, you must submit a proposed test plan. If you are seeking permission to use an alternative method of compliance based on previously performed testing, you must submit the results of testing, a description of the procedures followed in testing, and a description of pertinent conditions during testing.

(2) You must submit a monitoring plan that includes a description of the control device, test results verifying the performance of the control device, the appropriate operating parameters that will be monitored, and the frequency of measuring and recording to establish continuous compliance with the emission limitation in § 63.9500. You must also include the proposed performance specifications and quality assurance procedures for the monitors. The monitoring plan is subject to the Administrator's approval. You must install, calibrate, operate, and maintain the monitors in accordance with the monitoring plan approved by the Administrator.

(d) Use of the alternative method of demonstrating compliance must not begin until approval is granted by the Administrator.

§§ 63.9571–63.9579 [Reserved]

Tables

TABLE 1 TO SUBPART QQQQQ.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQ

[As required in § 63.9505, you must comply with each applicable General Provisions requirements according to the following table]

Citation	Subject	Applies to subpart QQQQQ?	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	
§ 63.6(a)–(c), (e)–(f), (i)–(j)	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(d)	[Reserved]		

TABLE 1 TO SUBPART QQQQQ.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQ—Continued

[As required in § 63.9505, you must comply with each applicable General Provisions requirements according to the following table]

Citation	Subject	Applies to subpart QQQQQ?	Explanation
§ 63.6(g)	Use of an Alternative Nonopacity Emission Standard.	No	Subpart QQQQQ contains no work practice standards.
§ 63.6(h)	Compliance with Opacity and Visible Emission Standards.	No	Subpart QQQQQ contains no opacity or VE limits.
§ 63.7(a)(1)–(2)	Applicability and Performance Test Dates	No	Subpart QQQQQ includes dates for initial compliance demonstrations.
§ 63.7(a)(3), (b)–(h)	Performance Testing Requirements	No	Subpart QQQQQ does not require performance tests.
§ 63.8(a)(1)–(2), (b), (c)(1)–(3), (f)(1)–(5)	Monitoring Requirements	Yes.	
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in 63.11.	No	Subpart QQQQQ does not require flares.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	No	Subpart QQQQQ specifies requirements for operation of monitoring systems.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	No	Subpart QQQQQ does not require COMS.
§ 63.8(c)(6)	Zero and High Level Calibration Check Requirements.	No	Subpart QQQQQ specifies calibration requirements.
§ 63.8(c)(7)–(8)	Out-of-Control Periods	No	Subpart QQQQQ specifies out-of-control periods and reporting requirements.
§ 63.8(d)	CMS Quality Control	No	Subpart QQQQQ requires a monitoring plan that specifies CMS quality control procedures.
§ 63.8(e)	CMS Performance Evaluation	No	Subpart QQQQQ does not require performance evaluations.
§ 63.8(f)(6)	Relative Accuracy Test Audit (RATA) Alternative.	No	Subpart QQQQQ does not require continuous emissions monitoring systems (CEMS).
§ 63.8(g)(1)–(5)	Data Reduction	No	Subpart QQQQQ specifies data reduction requirements.
§ 63.9(a)–(d), (h)–(j)	Notification Requirements	Yes	Except that subpart QQQQQ does not require performance tests or performance evaluations.
§ 63.9(e)	Notification of Performance Test	No	Subpart QQQQQ does not require performance tests.
§ 63.9(f)	Notification of VE/Opacity Test	No	Subpart QQQQQ contains no opacity or VE limits.
§ 63.9(g)	Additional Notifications When Using CMS	No	Subpart QQQQQ does not require performance evaluations.
§ 63.10(a),(b), (d)(1), (d)(4)–(5), (e)(3), (f)	Recordkeeping and Reporting Requirements.	Yes.	
§ 63.10(c)(1)–(6), (9)–(15)	Additional Records for CMS	No	Subpart QQQQQ specifies record requirements.
§ 63.10(c)(7)–(8)	Records of Excess Emissions and Paramter Monitoring Exceedances for CMS.	No	Subpart QQQQQ specifies record requirements.
§ 63.10(d)(2)	Reporting Results of Performance Tests	No	Subpart QQQQQ does not require performance tests.
§ 63.10(d)(3)	Reporting Opacity or VE Observations	No	Subpart QQQQQ contains no opacity or VE limits.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart QQQQQ does not require CEMS.
§ 63.10(e)(4)	Reporting COMS Data	No	Subpart QQQQQ does not require COMS.
§ 63.11	Control Device Requirements	No	Subpart QQQQQ does not require flares.
§ 63.12–63.15	Delegation, Addresses, Incorporation by Reference Availability of Information.	Yes.	

[FR Doc. 01–24887 Filed 10–3–01; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
October 4, 2001

Part VI

Commodity Futures Trading Commission

Securities and Exchange Commission

17 CFR Parts 1, 41, and 190

17 CFR Part 240

Applicability of CFTC and SEC Customer Protection, Recordkeeping, Reporting, and Bankruptcy Rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 41 and 190

RIN 3038–AB76

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–44854; File No. S7–17–01]

RIN 3235–AI32

Applicability of CFTC and SEC Customer Protection, Recordkeeping, Reporting, and Bankruptcy Rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (the ''Commissions'') are proposing rules under the Commodity Exchange Act (''CEA'') and the Securities Exchange Act of 1934 (''Exchange Act'') as part of the process of establishing a joint regulatory framework for persons registered with the CFTC as a futures commission merchant (''FCM'') and registered with the SEC as a broker or dealer (''broker-dealer'') to effect transactions in security futures products for customers. These rules are being proposed pursuant to provisions of the Commodity Futures Modernization Act of 2000 (''CFMA'') that direct the Commissions to address duplicative or conflicting regulations relating to the treatment of customer funds, securities or property involving security futures products applicable to any firm fully-registered with the CFTC as an FCM pursuant to CEA section 4f(a)(1) and fully-registered with the SEC as broker-dealer pursuant to Exchange Act section 15(b)(1). As proposed, the rules would require certain firms conducting business in security futures products to make choices concerning the treatment of accounts trading security futures products and require firms to make disclosure to customers concerning the treatment of their accounts. In addition, the proposed rules are designed to reduce duplicative regulations applicable to firms notice registered with the SEC pursuant to Exchange Act section 15(b)(11). These proposed rules are intended to address certain differences between the CEA and Exchange Act rules.

DATES: Comments must be received on or before November 5, 2001.

ADDRESSES: Comments should be sent to both agencies at the addresses listed below.

CFTC: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, Attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to secretary@cftc.gov. Reference should be made to ''Proposed Rule 41.42—Treatment of Customer Funds.''

SEC: Persons wishing to submit written comments should send three copies to 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 comment letters should refer to File No. S7–17–01; this file number should be included on the subject line if e-mail is used.

Comment letters received will be available for public inspection and copying in the SEC's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the SEC's Internet web site http://www.sec.gov). The SEC does not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

CFTC: Lawrence B. Patent, Associate Chief Counsel, Robert B. Wasserman, Associate Director, or Helene D. Schroeder, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430. E-mail: (lpatent@cftc.gov); (rwasserman@cftc.gov) or (hschroeder@cftc.gov).

SEC: Michael A. Macchiaroli, Associate Director, at (202) 942–0132; Thomas K. McGowan, Assistant Director, at (202) 942–4886; or Bonnie L. Gauch, Attorney, at (202) 942–0765, Office of Risk Management and Control; and with respect to Exchange Act Rule 10b–10, Catherine McGuire, Chief Counsel, or Theodore R. Lazo, Special Counsel, at (202) 942–0073 Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Background
A. Security Futures Products
B. Regulation of Broker-Dealers and FCMs that Effect Transactions in Security Futures Products
C. The Applicability of CFTC and SEC Customer Protection Rules and SIPA to Accounts Holding SFPs
1. Segregation Requirements
2. Rule 15c3–3 and SIPA
3. The CFTC and SEC Customer Protection Rules and SIPA Apply to Firms that Are Full FCMs/Full BDs
III. Proposed Rules and Amendments
A. Proposed Amendment to CFTC Rule 1.55
B. Proposed New Rule 41.42 and Paragraph (o) of Rule 15c3–3
1. Where SFPs May Be Held
2. Requirements for Holding and Effecting Transactions in SFPs for the Benefit of Customers
a. Disclosure Document Requirement
b. Customer Acknowledgement Requirement
3. Changes in Account Type
4. Recordkeeping Requirements
C. Customer Account Statements
D. Confirmations
E. CFTC Bankruptcy Treatment: Proposed Amendments to Part 190
F. Rule 15c3–3 Definitions
G. Exchange Act Recordkeeping Rules
H. Exchange Act Reporting, Notification, and Quarterly Count Requirements
IV. General Request for Comments
V. Paperwork Reduction Act
CFTC
SEC
A. Collection of Information under these Amendments
B. Proposed Use of Information
C. Respondents
D. Total Annual Reporting and Recordkeeping Burden
1. Rule 15c3–3
2. Rule 17a–4
E. Request for Comment
VI. Costs and Benefits of The Proposed Amendments
CFTC
SEC
A. Benefits
1. Elimination of Conflicting and Duplicative Regulation
2. Customer Understanding
3. Examination Efficiencies
B. Costs
1. Addition of Paragraph 15c3–3(o)
a. Establishment of a Written Policy
b. Furnishing a Disclosure Document to Customers
c. Obtaining an Acknowledgement from Customers
d. Creation of a Record of Changes of Account Type
e. Obtaining an Acknowledgement from Customers
f. Customer Notification of Effective Date of Change of Account Type

2. Amendments to Rule 17a–4
3. Systems Changes
VII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation
VIII. Summary of Regulatory Flexibility Act Certification CFTC SEC
IX. Text of Proposed Rules

I. Introduction

The CFMA,[1] which became law on December 21, 2000, amended the CEA and the Exchange Act to permit the trading of single stock and narrow-based stock index[2] futures (''security futures'')[3] and to establish a framework for the joint regulation by the CFTC and the SEC of security futures products[4] (''SFPs''). In addition, the CFMA amended the CEA and the Exchange Act to require that the CFTC and SEC consult with each other regarding regulations with which firms that are ''fully-registered'' with both the CFTC[5] and the SEC[6] (''Full FCM/Full BDs'') must comply, and issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to such firms with respect to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products.[7] The relevant provisions of the CFMA will become effective no sooner than one year from the date of the enactment of the CFMA (December 21, 2001).[8]

In order to avoid conflicting or duplicative regulation, the Commissions are proposing new rules that would permit a Full FCM/Full BD to choose (or let its customers choose) whether an account in which SFPs are held will be treated as a futures account subject to the segregation requirements of the CEA, or as a securities account subject to Exchange Act Rule 15c3–3 (''Rule 15c3–3'') and the Securities Investor Protection Act of 1970 (''SIPA'').[9] The Commissions are also proposing new rules that would require certain firms that engage in an SFP business: To establish written policies stating how customer SFP positions will be held; to make certain disclosures to customers regarding the nature and applicability of the protections that may be available to customers pursuant to the segregation requirements of the CEA, or the provisions of Rule 15c3–3 and SIPA; and to obtain a signed acknowledgement from each customer stating that the customer understands which regulatory scheme governs the account in which SFPs are held, and that the account will not be protected under the alternative regulatory scheme. These disclosure and acknowledgement requirements are intended to address any confusion that might arise as to whether the segregation requirements of the CEA or the provisions of Rule 15c3–3 and SIPA provisions apply to an account in which SFPs are held. To facilitate this rule change, the Commissions are also proposing new definitions for the terms ''futures account''[10] and ''securities account.''[11]

Separately, the Commissions are proposing to amend existing rules or add additional requirements designed to assure that the above-mentioned changes correspond with the existing regulatory structure. Specifically, the CFTC is proposing to amend its basic risk disclosure rule to require the above disclosures to customers concerning the segregation requirements and the provisions of Rule 15c3–3 and SIPA, and to amend the Part 190 bankruptcy rules to recognize differences in the treatment of futures accounts and securities accounts holding SFPs. The SEC is proposing to amend its Rule 15c3–3 definition of ''customer,''[12] and to amend Rules 17a–3, 17a–4, 17a–5, 17a–7, 17a–11, and 17a–13[13] to avoid duplicative regulation for certain FCMs registered with the SEC pursuant to section 15(b)(11) and the rules adopted by the SEC,[14] as well as for Full FCM/Full BDs, and to clarify the length of time that records required to be created pursuant to new section (o) of Rule 15c3–3 must be maintained.

II. Background

A. Security Futures Products

Generally, the term ''security future'' means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except exempted securities (with the exclusion of municipal securities) and certain agreements, contracts, or transactions excluded from the CEA.[15] Except as otherwise provided in a rule, regulation, or order issued jointly by the SEC and CFTC, a security future must be based upon common stock or such other equity securities as the SEC and the CFTC jointly determine appropriate.[16] Further, the term ''security futures product'' means a security future or any put, call, straddle, option, or privilege on any security future.[17]

The CFMA amended the Exchange Act definitions of ''security'' and ''equity security'' to include ''security future'' and ''any security future on any [stock or similar security],'' respectively.[18] In addition, definitions of the terms ''security future''[19] and ''security futures product''[20] were added to the Exchange Act and the CEA. Pursuant to these changes, a security futures product is both a security and a future and, therefore, is subject to the jurisdiction of the CFTC and the SEC.

---

[1] Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[2] CEA section 1a(25)(A) (7 U.S.C. 1a(25)(A)) and Exchange Act section 3(a)(55)(B) and (C) (15 U.S.C. 78c(a)(55)(B) and (C)). *See also* Exchange Act Release No. 44724 (August 20, 2001), 66 FR 44489 (August 23, 2001).

[3] The term ''security future'' means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under Section 3(a)(12) of the Exchange Act as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in Section 3(a)(29) as in effect on the date of enactment of the Futures Trading Act of 1982). The term ''security future'' does not include any agreement, contract, or transaction excluded from the CEA under Sections 2(c), (d), (f), or (g) of the CEA (as in effect on the date of enactment of the CFMA) or Title IV of the CFMA. CEA section 1a(31) (7 U.S.C. 1a(31)) and Exchange Act section 3(a)(55) (15 U.S.C. 78c(a)(55)).

[4] CEA section 1a(32) (7 U.S.C. 1a(32)) and Exchange Act section 3(a)(56) (15 U.S.C. 78c(a)(56)).

[5] Pursuant to CEA section 4f(a)(1) (7 U.S.C. 6f(a)(1)).

[6] Pursuant to Exchange Act section 15(b)(1) (15 U.S.C. 78*o*(b)(1)).

[7] CEA section 4d(c) (7 U.S.C. 6d(c)) and Exchange Act section 15(c)(3)(B) (15 U.S.C. 78*o*(c)(3)(B)).

[8] Section 6(g)(5)(A) of the Exchange Act provides that it is unlawful for any person to execute or trade a security futures product until the later of: ''(i) 1 year after the date of enactment of the Commodity Futures Modernization Act of 2000; or (ii) such date that a futures association registered under Section 17 of the Commodity Exchange Act has met the requirements set forth in Section 15A(k)(2) of this title.'' 15 U.S.C. 78f(g)(5)(A). There is an exception to this provision, however, for principal-to-principal transactions between eligible contract participants. Exchange Act section 6(g)(5)(B) (15 U.S.C. 78f(g)(5)(B)). The term ''eligible contract participant'' is defined at CEA section 1a(12) (7 U.S.C. 1a(12)).

[9] 15 U.S.C. 78aaa *et seq.*

[10] Proposed new paragraphs (vv) of CFTC Rule 1.3 and (a)(15) of Rule 15c3–3.

[11] Proposed new paragraphs (ww) of CFTC Rule 1.3 and (a)(14) of Rule 15c3–3.

[12] 17 CFR 240.15c3–3(a)(1).

[13] 17 CFR 240.17a–3, 240.17a–4, 240.17a–5, 240.17a–7, 240.17a–11, and 240.17a–13 respectively.

[14] 15 U.S.C. 78*o*(b)(11)(A)(i) and Exchange Act Release No. 44730 (August 21, 2001), 66 FR 45137 (August 27, 2001).

[15] *See* note 3.

[16] CEA section 2(a)(1)(D)(i)(III) (7 U.S.C. 4(a)(1)(D)(i)(II)) and Exchange Act section 6(h)(3)(D)(i)(III) (15 U.S.C. 78f(h)(3)(D)).

[17] *See* note 4.

[18] Exchange Act sections 3(a)(10) and (11) respectively (15 U.S.C. 78c(a)(10) and 15 U.S.C. 78c(a)(11)).

[19] *See* note 3.

[20] *See* note 4 and accompanying text.

B. Regulation of Broker-Dealers and FCMs that Effect Transactions in Security Futures Products

As an SFP is both a security and a future, a person must be registered both as an FCM with the CFTC and as a broker-dealer with the SEC to effect SFP transactions. The CFMA amended the CEA and the Exchange Act to provide notice registration procedures for persons that may be required to register with the SEC or the CFTC solely because they are effecting SFP transactions. Under the notice registration procedures, an FCM may register with the SEC pursuant to Section 15(b)(11) of the Exchange Act and the rules adopted by the SEC [21] (''Notice BD'') and a broker-dealer may register with the CFTC pursuant to Section 4f(a)(2) of the CEA and rules adopted by the CFTC [22] (''Notice FCM''). Notice BDs are exempt from certain provisions of the Exchange Act,[23] and Notice FCMs are exempt from certain provisions of the CEA.[24] These statutory provisions were designed to allow persons that previously had engaged ''solely'' in either the securities or futures business to participate in SFP business without being subject to conflicting or duplicative regulation.

C. The Applicability of CFTC and SEC Customer Protection Rules and SIPA to Accounts Holding SFPs

The CEA requires that customer funds be segregated and separately accounted for by FCMs.[25] In addition, the Exchange Act and certain rules enacted thereunder require that a broker-dealer follow certain steps to assure that customer assets are not used to fund the broker-dealer's business.[26] These provisions provide similar protections for customers, but, when applied to SFPs, could cause a Full FCM/Full BD to maintain two separate reserves to satisfy both sets of requirements. However, pursuant to the CEA, Exchange Act, and SIPA, a broker-dealer that also is a Notice FCM is not subject to the segregation requirements of the CEA,[27] and an FCM that also is a Notice BD is not subject to Rule 15c3–3 [28] and may not be a member of the Securities Investor Protection Corporation (''SIPC'').[29]

1. Segregation Requirements

Section 4d of the CEA [30] sets forth the segregation requirements that apply to FCMs with respect to commodity interest transactions. By this provision, an FCM must treat and deal with money, securities and property received from customers, or accruing to such customers as a result of trades, as belonging to such customers.[31] The money, securities and property of customers also may not be commingled with the funds of the FCM nor used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held.[32] Such money, securities and property, however, may, for convenience, be commingled with the money, securities and property of other customers when deposited with a bank, trust company, clearing organization or another FCM.

These segregation requirements protect the money, securities and property of customers of an FCM that are deposited to engage in commodity interest transactions. They provide protection by requiring that the customer funds be segregated from the FCM's own funds and strictly limit the permitted uses of the funds to customer-related transactions (such as to post margin and pay the daily variation settlement for customers' positions at the various futures clearing organizations). An FCM must have sufficient funds in segregation at all times to meet its obligations to customers. A firm must complete a computation demonstrating compliance with its segregation requirement on a daily basis.[33] If customer funds held in segregated accounts are less than the FCM's segregation requirement, the FCM must immediately deposit its own funds into the segregated account to meet the requirements and report immediately that it was undersegregated.[34] There is no limit on the amount of customer funds that is protected.

In the event of bankruptcy, customer claims have priority with respect to customer funds over all claims except administrative expenses related to such funds. If there also is a shortfall in the amount of funds held in segregation for customers, the distribution of customer funds proceeds on a *pro rata* basis.

Although the segregation requirements apply to an FCM with respect to SFPs, they are specifically made inapplicable by the CFMA to Notice FCMs.[35] Thus, the segregation requirements apply only to a firm that is fully-registered as an FCM.

2. Rule 15c3–3 and SIPA

Pursuant to Rule 15c3–3, broker-dealers that carry customer accounts are required to maintain, at all times when deposits are required, a ''Special Reserve Bank Account for the Exclusive Benefit of Customers'' [36] (''Special Reserve Account''). A broker-dealer must maintain in this account cash and/or qualified securities in amounts computed under a specified formula (the ''Reserve Requirement'').[37] The funds so held must be segregated from any other bank account of the broker-dealer.[38] Generally, broker-dealers that must maintain $1 million or more in their Special Reserve Accounts will compute their Reserve Requirement on a weekly basis (*i.e.,* as of each Friday). If necessary, these broker-dealers must then make a deposit to the Special Reserve Account to bring the balance in that account up to the Reserve Requirement no later than one hour after the opening of banking business on the second following business day.[39] Although Rule 15c3–3 applies to a broker-dealer with respect to SFPs, changes made to the Exchange Act by the CFMA make the Rule inapplicable to a Notice BD.[40] Thus, Rule 15c3–3 applies only to a firm that is a fully-registered broker-dealer.

SIPA provides additional protection for customer funds and securities held by a broker-dealer. SIPA defines the term ''customer'' as ''any person * * * who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person [including] any person who has deposited cash with the debtor for the purpose of purchasing securities * * *.'' [41] The CFMA amended SIPA's definition of the term ''security'' to include a ''security futures product.'' [42] Accordingly, a customer's funds held by

[21] *See* note 14.

[22] 7 U.S.C. 6f(a)(2) and 66 FR 43080 (August 17, 2001).

[23] Exchange Act section 15(b)(11)(B) (15 U.S.C. 78*o*(b)(11)(B)).

[24] CEA section 4f(a)(4)(A) (7 U.S.C. 6f(a)(4)(A)).

[25] CEA section 4d (7 U.S.C. 6d).

[26] Exchange Act section 15(c)(3) (15 U.S.C. 78*o*(c)(3)), and 17 CFR 240.15c3–3.

[27] CEA section 4f(a)(4)(A)(ii) (7 U.S.C. 6f(a)(4)(A)(ii)).

[28] Exchange Act section 15(b)(11)(B)(iii) (15 U.S.C. 78*o*(b)(11)(B)(iii)).

[29] SIPA section 3(a)(2)(A) (15 U.S.C. 78ccc(a)(2)(A)).

[30] *See* note 25.

[31] CEA section 4d(a)(2) (7 U.S.C. 6d(a)(2)).

[32] *Id.*

[33] 17 CFR 1.32.

[34] 17 CFR 1.12(h).

[35] CEA section 4f(a)(4)(A)(ii) (7 U.S.C. 6f(a)(4)(A)(ii)).

[36] 17 CFR 240.15c3–3(e).

[37] *Id.*

[38] *Id.*

[39] 17 CFR 240.15c3–3(e)(3).

[40] Exchange Act section 15(b)(11)(B)(iii) (15 U.S.C. 78*o*(b)(11)(B)(iii)).

[41] SIPA section 16(2) (15 U.S.C. 78*111*(2)).

[42] SIPA section 16(14) (15 U.S.C. 78*111*(14)).

a fully-registered broker-dealer for the purposes of trading SFPs benefit from SIPA protection, provided that a customer's SFP positions are carried in a securities account.

With limited exceptions, every broker-dealer registered pursuant to Section 15(b)(1) of the Exchange Act must be a member of SIPC.[43] When a SIPC member is closed due to bankruptcy or other financial difficulties, SIPC works to return to customers the cash and securities held by the broker-dealer. SIPA also provides that, to the extent that the broker-dealer does not have sufficient resources to return the cash and securities to customers, SIPC will replace the missing assets, up to $500,000 per customer (including $100,000 for cash claims). The CFMA further amended SIPA to provide that any FCM that registers as a Notice BD may not become a member of SIPC.[44] Because these Notice BDs are not members of SIPC, the customer funds held by them would not benefit from SIPA protection.

3. The CFTC and SEC Customer Protection Rules and SIPA Apply to Firms That Are Full FCMs/Full BDs

As discussed above, an FCM that is a ''Notice BD'' is not subject to Rule 15c3–3 and is not a member of SIPC. Similarly, a broker-dealer that is a ''Notice FCM'' is not subject to the segregation requirements of the CEA. Thus, an account in which customer SFP positions are held that is carried by a notice registrant is protected either by Rule 15c3–3 and SIPA or by the CEA segregation scheme, but not by both. However, absent the proposed rules, a Full FCM/Full BD would need to comply with the segregation requirements of the CEA, Rule 15c3–3, and SIPA with relation to customer accounts in which SFPs are held because an SFP is both a security and a future.

As amended by the CFMA, Section 4d(c) of the CEA[45] and Section 15(c)(3)(B) of the Exchange Act[46] require that the Commissions, in consultation with each other, issue such rules as are necessary to avoid duplicative or conflicting regulations applicable to a Full FCM/Full BD. The proposed rules would alleviate duplicative regulation by permitting Full FCM/Full BDs to either choose, or allow their customers to choose, whether SFP positions will be held in a futures account subject to CEA segregation requirements or a securities account subject to Rule 15c3–3 and SIPA.

III. Proposed Rules and Amendments

A. Proposed Amendment to CFTC Rule 1.55

CFTC Rule 1.55, which sets forth the general disclosure obligations of FCMs and introducing brokers, would be amended by adding proposed paragraph (h) to require FCMs that are soliciting or accepting orders for or otherwise handling any transaction in SFPs to provide the disclosures that are proposed to be added by CFTC Rule 41.42 (''Rule 41.42''). These obligations would not apply to a firm if it does not engage in SFP transactions on behalf of customers. Nor would they apply to a firm with respect to customers that do not engage in such transactions. However, if the customer engages or intends to engage in SFP transactions, the disclosure must be made, regardless of whether the customer is a retail client or an eligible contract participant.[47]

B. Proposed New Rule 41.42 and Paragraph (o) of Rule 15c3–3

1. Where SFPs May Be Held

Paragraph (a) of proposed Rule 41.42 and corresponding paragraph (o)(1) of Rule 15c3–3 would confirm that a Full FCM/Full BD is permitted to hold customer SFPs in either a futures account or a securities account.[48] The Full FCM/Full BD may choose either to maintain all customer SFPs in futures accounts, to maintain all customer SFPs in securities accounts, or to maintain some customers' SFP positions in futures accounts and other customers' SFP positions in securities accounts. In addition, a Full FCM/Full BD may decide to provide some or all of its customers with the discretion to select where their SFP positions will be held. In any event, the Full FCM/Full BD would have the choice to decide whether customer SFPs will be held in a futures account or in a securities account, or to provide customers with the discretion to select the account type.

The Commissions request comment on whether any differences in regulatory structure between the CEA and Exchange Act customer protection rules would cause broker-dealers or FCMs, or the customers of either, to be placed at a disadvantage if one structure were used as compared to the other, either from a regulatory or operational perspective. Further, the Commissions request comment on proposed paragraphs (a) of Rule 41.42 and (o)(1) of Rule 15c3–3 that permit firms to choose the type of account in which customer SFPs will be held, including with respect to any operational or regulatory issues. In addition, the Commissions request comment as to whether either the ability to provide customers with a choice as to the type of account in which they would like SFP positions to be held or the act of providing customers with such choice would raise any issues, including any operational or regulatory issues.

Proposed paragraph (a)(2) of Rule 41.42 and corresponding paragraph (o)(1)(ii) of Rule 15c3–3 would require a firm to establish a written policy describing whether customer SFPs and any customer assets used to margin them will be held in a futures account or a securities account. The firm's policy could stipulate that the firm holds SFPs for customers solely in securities accounts or solely in futures accounts. Alternatively, the firm's policy could provide that the firm permits customers to make an election as to the type of account in which SFPs will be held. If the firm decided to permit customers to make such an election, the firm would have to detail in its written policy the process and the procedure to be followed by the firm where the customer failed to make an election. Further, if a firm allows certain customers to make an election as to account type, but does not allow other customers to make such an election, the written policy should clearly explain which customers may or may not make an election.

2. Requirements for Holding and Effecting Transactions in SFPs for the Benefit of Customers

Proposed paragraph (b) of Rule 41.42 and corresponding paragraph (o)(2) of Rule 15c3–3 set forth a number of requirements that a firm would have to meet before it could hold or effect transactions in SFPs on behalf of a customer. Firms that do not permit customers to hold SFPs or engage in SFP transactions would not be affected by the proposed requirements.

The proposed rules also would apply where an account is transferred from another FCM or broker-dealer. For instance, a Full FCM/Full BD would be required to have written procedures relating to when a disclosure document will be provided to and an

[43] *See* note 29.

[44] *Id.*

[45] 7 U.S.C. 6d(c).

[46] 15 U.S.C. 78*o*(c)(3)(B).

[47] *See* note 8.

[48] The proposed amendments also would add paragraphs (vv) and (ww) to CFTC Rule 1.3, and corresponding paragraphs (a)(15) and (a)(14) to Rule 15c3–3, which define the terms ''futures account'' and ''securities account.'' Proposed paragraph 41.42(f) clarifies that money, securities, or property held to margin, guarantee or secure SFPs held in a futures account are subject to the segregation requirements of Section 4d of the CEA (7 U.S.C. 6d).

acknowledgement obtained from a customer transferring in an account containing SFPs. As with new accounts, firms would need to send a disclosure document and obtain an acknowledgement before any order for an SFP could be accepted from the customer. If the customer's SFPs are held in a futures account at the delivering firm, but the receiving firm's procedure is to maintain customer SFP positions in a securities account, the receiving broker-dealer would be required to receive a written acknowledgement of this change in account type from the customer.

a. Disclosure Document Requirement

Proposed new paragraph (b)(1) of Rule 41.42 and corresponding paragraph (o)(2)(i) of Rule 15c3–3 set forth the disclosure document requirements that would apply to a firm that engages in SFPs transactions on behalf of customers. The Commissions view these disclosure requirements as essential to address potential customer confusion regarding the nature of SFPs and the protections afforded to customers trading such products pursuant to the regulations of the Commissions. Specifically, these paragraphs would require a firm that effects SFPs transactions on behalf of customers to provide its customers with a general description of the protections afforded futures accounts under Section 4d of the CEA and securities accounts under Rule 15c3–3 and SIPA. In addition, the firm would have to indicate whether the customer's SFPs will be held in a futures account or in a securities account. The disclosure required pursuant to proposed paragraphs (b)(1)(iii) of Rule 41.42 and corresponding paragraph (o)(2)(i)(C) of Rule 15c3–3 also requires that a firm indicate whether the firm permits its customers to make or change an election. The proposed paragraphs also would require the firm to include a statement in the disclosure document that the protections provided by the alternative regulatory scheme would not be available with respect to that account.

The firm would not be required to furnish a disclosure document to every customer. Disclosure would be required only with respect to customers that engage or intend to engage in SFP transactions or for whom the firm holds SFPs. The Commissions expect that this disclosure document will be provided to a customer either when an account is opened or at some later date were the customer to express an interest in engaging in SFP transactions (but before an order to buy or sell an SFP is accepted by the firm).

In order to provide firms with maximum flexibility, the proposed rules do not set forth specific prescribed language that a firm would have to include in a disclosure document. Industry representatives developing a model disclosure document concerning SFPs have consulted the staffs of the Commissions. The staffs have encouraged these industry representatives to include discussions of both the segregation requirements and Rule 15c3–3 and SIPA protections in one model disclosure document.

The Commissions request comment on the disclosure document requirements contained in proposed paragraphs (b)(1) of Rule 41.42 and (o)(2)(i) of Rule 15c3–3, including any operational or regulatory issues. The Commissions also invite comments as to whether the rules should mandate specific language and, if so, suggestions as to what language should be included in the rules.

b. Customer Acknowledgement Requirement

So that a customer trading SFPs understands which protections would apply to that customer's account, proposed paragraph (b)(2) of Rule 41.42 and corresponding paragraph (o)(2)(ii) of Rule 15c3–3 would require that a Full FCM/Full BD obtain a signed acknowledgement from such customer before the firm could accept an order for a SFP from that customer. The acknowledgement would have to specify which regulatory regime applies and that the customer understands that the account will not be protected under the alternative regulatory scheme. This acknowledgement will help to evidence that a customer understands that an SFP held in a futures account is not covered by SIPA and an SFP held in a securities account is not protected by segregation. Notice registrants are not required to obtain this acknowledgment from customers because they are only subject to one customer protection regulatory scheme.[49]

The Commissions request comment on the requirement to obtain a signed acknowledgement contained in proposed paragraphs (b)(2) of Rule 41.42 and (o)(2)(ii) of Rule 15c3–3, including any customer protection, operational or regulatory issues. The Commissions also invite comment as to whether a signed acknowledgement is necessary to demonstrate that a customer understands the protections applicable to an account in which SFPs are traded and held, or, if not, what other procedure may instead be used to demonstrate the customer's understanding.

3. Changes in Account Type

Proposed paragraph (c) of Rule 41.42 and corresponding paragraph (o)(3) of Rule 15c3–3 set forth the general rule that a firm may change the type of account in which customer SFPs are held. This change may be made pursuant to a customer's request, or the firm could make a unilateral decision to change a customer's account type based on an assessment that one regulatory scheme or another is preferable or cost-effective. If a firm changes a customer's account type, the firm would be required to create a detailed record concerning the change, obtain a signed acknowledgement from the customer indicating that the customer understood which regulatory scheme governs the account and that the account would not be protected under the alternative regulatory scheme, and notify the customer in writing of the date that the change became effective.

While the rules would permit a Full FCM/Full BD to choose the type of account in which customer SFP positions would be held, and to unilaterally change the type of account in which customer SFP positions would be held, the Commissions expect that each firm will make these choices without unfairly disadvantaging its customers. A Full FCM/Full BD should consider the effect of its choices on its customers and the criteria used to make these choices in light of its obligations under the CEA, Exchange Act, and SRO Rules. At the same time, firms may have many reasons to change account types (*e.g.,* operational purposes), and the Commissions do not intend to limit a firm's ability to initiate account type changes for legitimate business purposes.

The Commissions invite comment on the advisability of allowing firms to change the type of account in which customer SFPs are held, including any operational or regulatory issues.

4. Recordkeeping Requirements

Proposed paragraph (d) of Rule 41.42 and corresponding paragraph (f)(2) of Exchange Act Rule 17a–3 are intended to clarify what recordkeeping requirements would apply to a Full FCM/Full BD that effects transactions in and holds SFPs for the benefit of customers and to address the Commissions' obligations to avoid duplicative or conflicting regulations relating to the maintenance of books and

[49] *See* notes 21 through 24 and accompanying text.

records involving SFPs by Full FCMs/Full BDs.

Certain differences exist between the CFTC books and records rules and Exchange Act Rules 17a–3 and 17a–4. For instance, CFTC Rule 1.31 requires that all books and records required to be kept by an FCM must be kept for a period of five years from the date thereof, and further, that the required books and records may be stored on micrographic or electronic storage media unless the documents are trading cards or other documents on which trade information is originally recorded in writing.[50] Certain records required to be preserved pursuant to the Exchange Act Rule 17a–4, by contrast, must be held for either three or six years, depending upon the particular record.

The Commissions believe that application of the specific recordkeeping requirements under the CEA and the Exchange Act should follow from the type of account in which the SFPs are held. Thus, if SFPs are held in a futures account, the recordkeeping requirements under the CEA would apply to the firm with respect to that account. Conversely, if SFPs are held in a securities account, the recordkeeping rules under the securities laws would apply. Such recordkeeping requirements would be in addition to those that would be imposed by proposed Rule 41.42 and paragraph (o) of Rule 15c3–3.

The Commissions request comment as to whether any records required to be created or maintained pursuant to either regulatory scheme should also be required by the recordkeeping rules of the other regulator so that full and complete records are maintained regarding SFP transactions under both regulatory schemes. In addition, the Commissions request comment on whether the amendments to the Commissions' record creation and maintenance rules proposed in this release are sufficient to avoid conflicting or duplicative regulation.

C. Customer Account Statements

The Commissions similarly believe that application of the specific customer account statement delivery requirements under the CEA and the Exchange Act should follow from the type of account in which SFPs are held. Generally, FCMs must send account statements to customers monthly,[51] whereas broker-dealers must send account statements to customers on a quarterly basis.[52] Nevertheless, the Commissions propose that application of the requirements for sending account statements to customers should follow from the type of account in which the SFPs are held.[53]

D. Confirmations

The Commissions request comment on the application to transactions in SFPs of their confirmation rules (Rules 10b–10 under the Exchange Act[54] and Rule 1.33(b) under the CEA),[55] which have different requirements. Should the application of the confirmation rules to FCMs and broker-dealers follow from the type of account in which SFPs are held? Does the information that FCM customers receive on confirmations prepared pursuant to CEA Rule 1.33(b) serve the purposes of Exchange Act Rule 10b–10? Should FCMs provide the particular information required by Exchange Act Rule 10b–10 to customers in SFP transactions upon the customers' request, to the extent that the information is not already provided on the confirmation that the FCM prepares pursuant to CEA Rule 1.33(b)? What would be the cost(s) to FCMs to provide the information required under Exchange Act Rule 10b–10 on SFP confirmations? What would be the cost(s) to broker-dealers to provide the information required under Rule 1.33(b) on SFP confirmations? How long would it take firms to implement systems to provide this information? Are there any other considerations relating to customers that should be taken into account?

E. CFTC Bankruptcy Treatment: Proposed Amendments to Part 190

The proposed amendments to part 190 are intended to make clear that a customer that is trading SFPs that are held in a securities account at a broker-dealer would not be entitled to benefit from the priority treatment Part 190 affords to customers in the event of insolvency of the FCM. The amendments would exclude from the definition of ''specifically identifiable property,'' security futures products and any property received to margin, guarantee or secure such positions held in a securities account. SFP positions and associated margin held in such accounts would be excluded from the net equity calculation and the definition of ''customer property.'' Consistent with these changes, claimants would have to signify on their proof of claim form whether SFP positions are held in a securities or futures account.

F. Rule 15c3–3 Definitions

The SEC is proposing to change the definition of ''customer'' and, as stated earlier, to add new definitions of ''securities account'' and ''futures account'' to establish which customer assets will be protected under the Exchange Act/SIPA scheme and which will be protected under the CEA/Part 190 scheme. To this end, a sentence has been added to the 15c3–3(a)(1) definition of ''customer'' that states, ''[i]n addition, the term [customer] shall not include a person to the extent that the person has a claim for security futures products held in a futures account.'' Further, new definitions of the terms ''securities account'' and ''futures account'' have been added to Rule 15c3–3 to clarify the customer definition by distinguishing the difference between a securities account and a futures account, as well as certain requirements set forth in proposed subsection (o) to Rule 15c3–3.

G. Exchange Act Recordkeeping Rules

The SEC is proposing to amend Rule 17a–3 by adding paragraph (f)(1) to clarify that an FCM that is a Notice BD is not subject to Rule 17a–3. This will also exempt such firms from compliance with much of Rule 17a–4. As stated previously, the SEC is also proposing to add paragraph (f)(2), which would clarify the recordkeeping requirements for Full FCM/Full BDs to avoid duplicative and conflicting regulation. The SEC is also proposing to amend Rule 17a–4 to clarify the length of time certain records must be maintained, and to incorporate a paragraph similar to CFTC Rule 1.35(a–2)(1) relating to documentation of cash transactions underlying exchanges of futures for cash commodities.

The SEC is of the view that, to alleviate potentially duplicative regulations, application of the recordkeeping requirements under the CEA and the Exchange Act should follow from the type of account in which the SFPs are held. As discussed above, proposed paragraph 17a–3(f) would codify this position. As a Notice BD must hold customer SFP positions in a futures account, it would not be subject to Exchange Act Rules 17a–3 and 17a–4. However, although a Notice BD is not subject to the record creation

[50] 17 CFR 1.31.

[51] 17 CFR 1.33(a). FCMs may send a quarterly statement if the account has neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period.

[52] *E.g.,* NYSE Rule 409. However, in some cases broker-dealers must send account statements to customers more frequently (*see, e.g.,* NYSE Rule 730), and as a general business practice most broker-dealers send a monthly statement to each customer whose account has experienced activity during that month.

[53] Proposed paragraph (e) of Rule 41.42.

[54] 17 CFR 240.10b–10.

[55] 17 CFR 1.33(b).

requirements set forth in Rule 17a–3, it would be required to provide the SEC staff with documentation maintained pursuant to CFTC rules relating to SFP activities if such documents are requested.[56] The relief from Rule 17a–3 applicable to a Full FCM/Full BD is limited to circumstances where it holds or effects transactions in SFPs in a futures account.

The SEC is also proposing to amend Rule 17a–4(b)(9) to establish the length of time that those records broker-dealers must create pursuant to new paragraph 15c3–3(o) must be maintained. This paragraph will clarify that records created pursuant to new paragraph 15c3–3(o) must be kept for at least three years, the first two in an easily accessible place.

Lastly, the SEC is proposing new paragraph (k) to Exchange Act Rule 17a–4, which is meant to parallel the requirements of CFTC Rule 1.35(a–2)(1). This paragraph would require a broker-dealer that engages in an SFP business, upon request of the SEC, to request from its customers and provide to the SEC documentation of cash transactions underlying exchanges of SFPs for the underlying security(ies). This type of transaction is also called an exchange of futures for physicals (or an ''EFP''),[57] and is usually negotiated by the parties rather than being executed openly and competitively on an exchange or contract market. To fulfill its obligations under this rule, a broker-dealer may include the requirement that customers provide this information, if requested, in the account opening documents. The purpose of this proposed rule is to provide securities regulators with a method of obtaining information on each transaction underlying SFPs. Further, this information may be necessary to protect against market manipulation relating to physically-settled SFPs.

H. Exchange Act Reporting, Notification, and Quarterly Count Requirements

The SEC is also proposing new paragraphs 17a–5(a)(5), 17a–7(c), 17a–11(e), and 17a–13(e), which would exempt certain Notice BDs from the requirements to file FOCUS reports,[58] maintain records at a place within the United States,[59] send telegraphic notification to the SEC,[60] and perform quarterly securities counts to verify positions.[61] These exemptions would be limited to Notice BDs that are not members of a national securities exchange or national securities association fully-registered with the SEC pursuant to Sections 6(a) or 15A(a) of the Exchange Act respectively (''Fully-registered National Securities Exchange'' and ''Fully-registered National Securities Association'').[62] Notice BDs that are only members of one or more designated contract markets or derivatives transaction execution facilities, registered with the CFTC pursuant to CEA Sections 5 and 5a[63] and also registered as national securities exchanges or national securities associations solely for the purpose of trading SFPs by filing notice pursuant to either Section 6(g) or 15A(k) of the Exchange Act,[64] would not be required to file FOCUS reports.

IV. General Request for Comments

In addition to the specific requests for comments included in the release, the Commissions invite interested persons to submit written comments on all aspects of the proposed amendments. The Commissions also request comment as to whether there are other issues raised by the CFMA, including those related to any CEA, Exchange Act, and SIPA inconsistencies or areas of duplicative regulation regarding segregation, customer protection, creation and maintenance of records, customer statement and confirmation requirements, requirements to make or send reports or notifications to regulatory authorities, and requirements to periodically count or verify positions that have not been addressed in this release.

V. Paperwork Reduction Act

CFTC

This proposed rulemaking contains information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[65] The CFTC has submitted a copy of this part to the Office of Management and Budget (''OMB'') for its review.

Collection of Information

Part 41, Relating to security futures products, OMB Control Number 3038–0059.

The estimated burden associated with the proposed new rule would be 450 hours, which will result from new disclosure requirements applicable to FCMs. An estimated 225 firms will issue such disclosure statements and will obtain acknowledgements from customers.

The estimated burden of the proposed new rule was calculated as follows:

Estimated number of respondents: 225.

Reports annually by each respondent: 2.

Total annual Responses: 450.

Estimated average Number of Hours Per Response: 1.

Estimated Total Number of Hours of Annual Burden in Fiscal Year: 450.

This annual reporting burden of 450 hours represents an increase of 450 hours as a result of the proposed new rule.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Building, Washington, DC 20503, Attention: Desk Officer for the Commodity Futures Trading Commission.

The CFTC considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the CFTC, including whether the information will have a practical use;
- Evaluating the accuracy of the CFTC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

[56] *See* Exchange Act section 17(b) (15 U.S.C. 78q(b)).

[57] An EFP involves simultaneous transactions in the futures and securities markets. Thus, one party buys the security and simultaneously sells (or gives up the long) SFPs while the other party sells the security and simultaneously buys (or receives long) SFPs.

[58] Broker-dealers are required to file monthly and/or quarterly reports on Form X–17A–5 pursuant to Rule 17a–5(a) (17 CFR 240.17a–5(a)), commonly referred to as FOCUS Reports.

[59] Non-resident brokers and dealers are required, pursuant to Rule 17a–7 (17 CFR 240.17a–7), to maintain certain records at a location, designated by the firm, within the United States, or provide the SEC with a signed undertaking stating that it will furnish such records to representatives of the SEC upon demand.

[60] Pursuant to Rule 17a–11 (17 CFR 240.17a–11).

[61] Pursuant to Rule 17a–13 (17 CFR 240.17a–13).

[62] 15 U.S.C. 78f(a) and 15 U.S.C. 78*o*–3(a). This does not include any national securities exchanges or national securities associations that are registered pursuant to Section 6(g) or 15A(k) of the Exchange Act (15 U.S.C. 78f(g) or 15 U.S.C. 78*o*–3(k)).

[63] 7 U.S.C. 7 and 7a.

[64] 15 U.S.C. 78f(g) or 15 U.S.C. 78*o*–3(k).

[65] 44 U.S.C. 3501 *et seq.*

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the CFTC on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

SEC

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the PRA. The SEC has submitted the proposed amendments to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR § 1320.11. The SEC is revising the collection of information under the title ''Amendments to Rules 15c3–3, 17a–3, 17a–4, 17a–5, 17a–7, 17a–11, and 17a–13 to Recognize Security Futures Products.'' The rules being amended contain currently approved collections of information under OMB control numbers 3235–0078, 3235–0033, 3235–0279, 3235–0123, 3235–0131, 3235–0085, and 3235–0035 respectively. The SEC projects that these amendments will change the burden for firms with respect to only two of these rules, specifically Rule 15c3–3 and 17a–4 (OMB control numbers 3235–0078 and 3235–0279 respectively), because the amendments to Rules 17a–3, 17a–5, 17a–7, 17a–11, and 17a–13 exempt certain Notice BDs from the requirements of those rules. The collections and maintenance of information, and the reports made to the SEC and others that are required pursuant to rules 15c3–3, 17a–3, 17a–4, 17a–5, 17a–7, 17a–11, and 17a–13 are mandatory. Reports made to the SEC pursuant to Rules 17a–5 and 17a–11 are considered by the SEC to be confidential financial information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Collection of Information under these Amendments

As mentioned previously in this release, the Amendments to Rules 15c3–3, 17a–3, 17a–4, 17a–5, 17a–7, 17a–11, and 17a–13 to Recognize Security Futures Products would require a broker-dealer that effects transactions in and hold SFPs for customers to establish a written policy, create a disclosure document and provide it to each customer that engages in SFP activities, obtain a signed acknowledgement from every such customer, and, if the broker-dealer also allows for changes of account type to be made, create a record of each change of account type, obtain a signed acknowledgement from every customer whose account type has been changed, and send notification of the effective date of the change to the customer. These records would need to be maintained by the broker-dealer for at least three years, the first two in an easily accessible place. The collection of information would be mandatory for each broker-dealer that wishes to effect transactions in and hold SFPs for customers.

B. Proposed Use of Information

The information collected pursuant to the proposed amendments to Rules 15c3–3, 17a–3, 17a–4, 17a–5, 17a–7, 17a–11, and 17a–13 would be used by the SEC, SROs, and other securities regulatory authorities, during examinations and investigations, to determine that a broker-dealer is in compliance with these rules and with other, related customer protection requirements. No governmental agency would regularly receive any of the information described above. Instead, the information would be stored by the broker-dealer and made available to the various securities regulatory authorities as required to facilitate examinations and investigations. Broker-dealers would also be required to provide each customer that wishes to engage in SFP activities a disclosure document, obtain an acknowledgement from every such customer, and send a notification to any customer whose account type has been changed.[66] The disclosure document would be used by customers to determine the protections provided by the various regulatory schemes to an account in which SFPs are held.

C. Respondents

These proposed amendments to Rules 15c3–3 and 17a–4 would only apply to firms that plan to effect transactions in and hold SFPs for the benefit of customers. In addition, these provision could only apply to broker-dealers that carry customer funds, securities or property and do not claim an exemption from Rule 15c3–3 (''clearing and carrying firms''). As of December 31, 2000, there were 425 registered broker-dealers doing a public business and not claiming an exemption from Rule 15c3–3 (''clearing and carrying firms''). In addition, only firms that plan to effect transactions in and hold SFPs for the benefit of customers will be required to comply with this rule. As of March 31, 2001, 90 broker-dealers were registered with the CFTC as FCMs, 63 of which are clearing and carrying firms. Based upon conversations between the SEC and industry representatives regarding the number of firms that may conduct a SFP business, the Staff estimates that the number of firms that will decide to engage in this business, in addition to the broker-dealers already registered with the CFTC as FCMs, is 10% of the clearing and carrying firms not presently registered with the CFTC. Thus, the Staff estimates that approximately 100 firms $(63 + ((425 - 63) \times 10\%))$ will be required to comply with these proposed amendments.

The amendments to Rules 17a–3, 17a–5, 17a–7, 17a–11, and 17a–13 exempt certain parties from those rules, so they do not create any additional burdens.

D. Total Annual Reporting and Recordkeeping Burden

The hour burden of the proposed amendments to Rules 15c3–3, 17a–3, 17a–4, 17a–5, 17a–7, 17a–11, and 17a–13 is difficult to ascertain as any additional burdens would vary widely due to differences in broker-dealer SFP activity levels and current procedures and systems employed by the broker-dealers. The proposed amendments were drafted to permit flexible methods for the creation of records in order to reduce the burdens on broker-dealers.

The changes to Rules 17a–3, 17a–5, 17a–7, 17a–11 and 17a–13 will exempt certain broker-dealers that are registered by filing a notice with the SEC pursuant to Section 15(b)(11) of the Exchange Act from the requirements of these rules. Thus, they do not create or change any burdens or costs.

1. Rule 15c3–3

Pursuant to proposed new paragraph (o)(2)(iii) of Rule 15c3–3, a broker-dealer that effects transactions in SFPs for customers must obtain an acknowledgement from each customer indicating that a customer understands which regulatory structure will not apply to an account in which SFP transactions are effected or held. Broker-dealers will incur processing costs relating to receipt, tracking, and filing the signed acknowledgements. As stated previously, the SEC Staff estimates, based on conversations with industry groups, that 7,808,000 customers may want to effect transactions in SFPs and will therefore need to return the acknowledgement. The Staff estimates that it will take a person 5 minutes to

[66] Proposed paragraph (o) of Rule 15c3–3.

process each acknowledgement.[67] Thus, the total burden associated with processing these acknowledgements will be approximately 650,700 hours per year.[68]

Pursuant to proposed new paragraph (o)(3)(i) of Rule 15c3–3, a broker-dealer that changes the type of account in which a customer's SFPs are held must create a record of each change in account type. The Staff believes that not all broker-dealers that effect transactions in SFPs for customers will allow for changes in account type. To the extent that a broker-dealer does provide for changes of account type, the information required to be recorded is the type of information that could be easily accessed or created and maintained, therefore the Staff believes the costs of maintaining this information will be minimal. As discussed above, the Staff estimates that broker-dealers would be required to create this record for 1,561,600 accounts.[69] The Staff believes that it will take approximately 3 minutes to create each record.[70] Thus, the total annual burden associated with creating this record of change of account type will be 78,080 hours.[71]

Pursuant to proposed new paragraph (o)(3)(ii) of Rule 15c3–3, a broker-dealer that changes the type of account in which a customer's SFPs are held must obtain an acknowledgement from each customer whose account type was changed indicating that a customer understands which regulatory structure will not apply to that account. As discussed above, the Staff estimates that 1,561,600 accounts per year may change account type, thus broker-dealers would be required to obtain an acknowledgement from 1,561,600 customers. The Staff believes that it will take a broker-dealer approximately 5 minutes to process each acknowledgement. Thus, the total yearly burden of processing these acknowledgements will be approximately 130,133 hours.[72]

In total the SEC estimates that compliance with the proposed amendments to Rule 15c3–3 will require an additional 858,913 hours per year (650,700[73] + 78,080[74] + 130,133[75]).

2. Rule 17a–4

The changes to Rule 17a–4 clarify that the records required to be created pursuant to proposed paragraph 15c3–3(o) must be maintained for at least three years, two in an easily accessible place. Once these records are filed, the cost to maintain them is minimal. The SEC believes that the main cost would be the cost to assure that the broker-dealer is in compliance with the rule. The Staff estimates that it will take, on average, one compliance person approximately 1 hour per year to assure that the broker-dealer is in compliance with the record maintenance provisions of paragraph 17a–4(b)(9) as it relates to new paragraph 15c3–3(o). Thus, the total yearly burden of assuring compliance with the amendment to Rule 17a–4(b)(9) is approximately 100 hours (1 hour × 100 broker-dealers).

New paragraph 17a–4(k) would require that a broker-dealer that engages in a SFP business, upon request of the SEC, request from its customers and provide to the SEC documentation of cash transactions underlying exchanges of security futures products for the underlying security(ies). Broker-dealers can include an agreement that customers provide the broker-dealer with this documentation in many other account opening agreements or in the acknowledgement document, which must be created and the cost of which is provided for above. It has not yet been determined whether SFPs will be cash settled or physically settled. In addition, this is not a record which the broker-dealer would be required to create or maintain, but instead, a broker-dealer would only create this record when requested by the SEC.

The SEC Staff believes this requirement to be analogous to bluesheet requests made by the SEC to broker-dealers. Bluesheet requests are only sent to clearing firms, 661 of which were registered with the SEC as of December 31, 2000.[76] The SEC sent 32,278 bluesheet request letters to 294 broker-dealers from January 1, 2000 to December 31, 2000. Thus, 45% of the broker-dealers that could be affected received letters, and those broker-dealers that did receive letters received, on average, 110 letters each. Therefore, the SEC Staff estimates that 45 clearing and carrying firms that engage in SFP business will receive approximately 110 requests for the information required to be collected and provided pursuant to proposed paragraph (k) of Rule 17a–4, or a total of 4,950 requests. The SEC Staff estimates (based on its experience) that it will take approximately 2 hours for a broker-dealer to respond to a request to provide this information to a regulator. Therefore, the SEC Staff believes that it would take a total of approximately 9,900 hours each year for broker-dealers to comply with this requirement.[77]

In total the SEC estimates that compliance with the proposed amendments to Rule 17a–4 will require an additional 10,000 hours per year.

E. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the SEC solicits comments to—(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information; (iii) Enhance the quality, utility, and clarity of the information to be collected; (iv) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The SEC strongly encourages commenters to identify and supply any relevant data, analysis and estimates concerning the burden of the proposed rules, especially where any commenter believes the SEC's estimates to be inaccurate.

Persons desiring to submit comments on the collection of information requirements proposed above should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs,

[67] As the majority of clearing and carrying firms use automated account recordkeeping systems, the Staff believes that ''processing'' would consist of accessing the customer account record and noting receipt of the acknowledgement, then filing or scanning the acknowledgement. This estimate is based on representations made by industry representatives relating to other rule changes that included similar processing requirements.

[68] Or ((5min/60min) × 7,808,000 accounts). However, it should be noted that the Staff believes it to be unlikely that broker-dealers will experience 100% turnover in the number of SFP accounts, so these costs may decrease in subsequent years.

[69] As stated previously, the Staff estimates that 7,808,000 customers may want to engage in SFP transactions. Further, the Staff estimates that 20% per year may change account type. 20% of 7,808,000 is 1,561,600.

[70] In fact, the Staff believes that most firms will have this process automated. To the extent that no person need be involved in the generation of this record, the costs will be very minimal.

[71] (1,561,600 accounts x(3min/60min). However, it should be noted that the Staff believes it to be unlikely that broker-dealers will experience 100% turnover in the number of SFP accounts, so these cost may decrease in subsequent years.

[72] ((5min/60min) × 1,561,600 accounts). However, it should be noted that the Staff believes it to be unlikely that broker-dealers will experience 100% turnover in the number of SFP accounts, so these costs may decrease in subsequent years.

[73] Associated with proposed paragraph (o)(2)(iii) (17 CFR 240.15c3–3(o)(2)(iii)).

[74] Associated with proposed paragraph (o)(3)(i) (17 CFR 240.15c3–3(o)(3)(i)).

[75] Associated with proposed paragraph (o)(3)(ii) (17 CFR 240.15c3–3(o)(3)(ii)).

[76] *See* note 84.

[77] (4,950 requests × 2 hours per request) = 9,900 hours per year.

Office of Management and Budget, Room 10102, 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. S7–17–01. 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. The SEC has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–17–01, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

VI. Costs and Benefits of the Proposed Amendments

CFTC

Section 15 of the CEA, as amended by Section 119 of the CFMA, requires the CFTC to consider the costs and benefits of its actions before promulgating new regulations or issuing orders [78] under the CEA. By its terms, Section 15 does not require the CFTC to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh the costs. Rather, Section 15(a) simply requires the CFTC to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that the costs and benefits of the proposed CFTC action shall be evaluated in light of the following five considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The CFTC may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

There are three considerations relevant to this proposal. These are: (1) Protection of market participants and the public; (2) sound risk management practices; and (3) other public interest considerations. The CFTC has considered the costs and benefits of this proposal in light of these three areas of concern.

The proposal includes a disclosure requirement applicable to FCMs. Specifically, proposed rule 41.42 would require FCMs to make disclosure concerning the customer protections available under both the securities and futures regulatory systems. This requirement and the requirement that Full FCM/Full BDs obtain an acknowledgement from each customer stating that the customer is aware that the alternative regulatory protections are inapplicable to the customer's SFP account are specifically intended to ensure that SFP customers know what protections are, or are not, in place in the unlikely event of the insolvency of the firm.

In addition, Section 4d(c) of the CEA, as amended by the CFMA, requires the CFTC, in consultation with the SEC, to issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any firm that is fully-registered with both the CFTC and the SEC involving the application of relevant provisions of the CEA and the regulations relating to the treatment of customer funds. The proposed rule is intended to focus the dually-registered firms on the need to select which of the two regulatory regimes, the segregation requirements of the CEA or SIPA provisions, will provide coverage for SFP customer funds in the unlikely event that the firm becomes insolvent. This will be part of a firm's overall risk management structure to safeguard customer and firm assets.

As proposed, Rule 41.42 is intended to minimize the costs of compliance because it provides firms with maximum flexibility, consistent with legal requirements, in designing their own disclosure documents.[79] The CFTC notes that industry representatives, in consultation with staffs of the CFTC and SEC, are developing a model disclosure document concerning SFPs. The CFTC has expressed the view that the disclosure document should incorporate a discussion of the segregation requirements and SIPA, and that if it does, the CFTC will not require the discussion to be set forth in another separate document.

The CFTC invites public comment concerning its evaluation of the costs and benefits of the proposed rule. Commenters are invited to submit any data that they may have that will help in quantifying the costs and benefits of the proposed rules.

SEC

Passage of the CFMA in December of 2000 permitted the trading of single stock and narrow-based stock index futures and established a framework for joint regulation of SFPs by the CFTC and the SEC. This framework was necessary because the CFMA defined an SFP to be, at the same time, both a security and a contract for future delivery and therefore subject to both the CEA and the Exchange Act and the rules thereunder. In addition, the CFMA amended the CEA and the Exchange Act to require that any exchange or association listing SFPs and any intermediary effecting transactions in SFPs must register with both the CFTC and the SEC, subjecting these parties to both sets of regulations.

Although the CFMA amended the CEA and the Exchange Act such that fully-registered broker-dealers that are Notice FCMs are not subject to certain sections of the CEA and the rules thereunder, and that fully-registered FCMs that are Notice BDs are not subject to certain sections of the Exchange Act and the rules thereunder, Notice FCMs were not exempted from the entire CEA and Notice BDs were not exempted from the entire Exchange Act. In addition, firms that are fully-registered with both the CFTC and the SEC are fully subject to both the CEA and the Exchange Act and the rules thereunder.

Recognizing that some Full FCM/Full BDs may be subject to duplicative or conflicting regulations, the CFMA amended the CEA and the Exchange Act to direct the CFTC and the SEC to issue rules, regulations, or orders, as necessary, to avoid certain duplicative or conflicting regulations.[80] To this end, the SEC is proposing to amend Exchange Act Rules 15c3–3 and 17a–4 by adding new paragraphs (o) and (b)(9) respectively. The SEC is also proposing amendments that would exempt certain Notice BDs from Exchange Act Rules 17a–3, 17a–5, 17a–7, 17a–11, and 17a–13.

The amendments to Rule 15c3–3 would allow a Full FCM/Full BD to

[78] Section 15(a)(3) sets forth three exceptions to the requirement for conducting a cost benefit analysis, none of which would be applicable to the proposed rule changes.

[79] The Commissions have requested comment, however, on whether the proposed amendments should include standard mandatory language to be used by all firms.

[80] CEA section 4d(c) (7 U.S.C. 6d(c)) and Exchange Act section 15(c)(3)(B) (15 U.S.C. 78*o*(c)(3)(B)) respectively.

choose to carry a customer's SFP positions either in a securities account or a futures account. Whether a SFP is held by a Full FCM/Full BD in a securities or a futures account will determine whether the account will be subject to the CFTC's segregation requirements or the SEC's customer protection rule and SIPA. To both identify the manner in which a firm holds SFPs and to assure that each customer understands which regulatory structure will be applied to an account in which SFPs are held, proposed paragraph (o) of Rule 15c3–3 requires that a firm establish written policies, provide customers with specific disclosures, and obtain written acknowledgements from customers indicating that the customer understands which regulatory structure governs an account in which SFPs are held. In addition, if a firm provides a structure that permits the account type to be changed, the firm must also create a detailed record of any change, obtain an additional acknowledgement from the customer indicating that they understand a change has been made and that the account will be protected pursuant to a new regulatory structure, and notify the customer in writing of the effective date of the change.

The SEC has identified below certain costs and benefits relating to the proposed Amendments to Rules 15c3–3, 17a–3, 17a–4, 17a–5, 17a–7, 17a–11, and 17a–13 to Recognize Security Futures Products. The SEC requests comments on all aspects of this cost-benefit analysis, including identification of any additional costs and/or benefits of the proposed amendments. The SEC strongly encourages commenters to identify and supply any relevant data, analysis and estimates concerning the costs and/or benefits of the proposed amendments.

A. Benefits

1. Elimination of Conflicting and Duplicative Regulation

The proposed amendments to Rule 15c3–3 benefit broker-dealers by eliminating certain conflicting regulations for Full FCM/Full BDs. The amendments to Exchange Act Rules 17a–3 and 17a–4 also eliminate duplicative regulations for Notice BDs, which would have been subject to more than one set of recordkeeping rules.

The simplicity of these amendments benefits broker-dealers as well. The CFTC and the SEC, in amending these rules to eliminate duplicative and conflicting regulations, attempted to provide as much flexibility and create as few operational issues and additional costs as possible. Instead of creating a new structure to be used solely for SFPs, the Commissions made changes to the existing rules. Effectively, the proposed amendments allow broker-dealers and FCMs to maintain the same operational structure they use presently for securities and for futures, and simply choose the type of account in which SFPs will be held, therefore determining which regulatory structure will be applicable to SFPs.

2. Customer Understanding

The purpose of these two regulatory schemes is the protection of customer assets. The SEC believes it is important that customers are informed of what regulatory protections apply to the account in which their SFPs are held. If a firm does not allow customers to choose whether their SFP positions will be held in a securities account or a futures account, the disclosure document will help customers understand the regulatory protections applicable to their account. If a firm allows customers to choose whether their SFP positions will be held in a securities account or a futures account, the requirement that a disclosure document be sent to customers describing the protections afforded pursuant to Rule 15c3–3 and SIPA, as well as the protections afforded pursuant to CEA segregation rules will assist the customer in making an informed decision as to which regulatory scheme will protect their account. In addition, the requirement that a broker-dealer obtain a written acknowledgement from the customer indicating that the customer understands that an account will not be protected pursuant to the alternative regulatory scheme commemorates the customer's understanding of this issue, protecting both the customer and the broker-dealer. Without the disclosure document, it would be more difficult for the customer to obtain the information necessary to make an informed decision.

The requirement that the broker-dealer send a disclosure document to customers and obtain a written acknowledgement from them also benefits the broker-dealer. By sending this disclosure document and obtaining the customer's signed acknowledgement, the broker-dealer evidences that the customer has been notified and has agreed to the regulations applicable to an account. If a dispute with the customer were to arise, the broker-dealer may use the signed acknowledgement as evidence that the customer consented to the regulatory program that applied to the account.

3. Examination Efficiencies

Certain of the requirements included in the amendments are designed to assure that examinations of broker-dealers proceed in an efficient and effective manner. If the regulatory agency staff is unable to ascertain which regulatory structure is applicable to each customer account or what procedures the broker-dealer employs with relation to the administration of those accounts, it must spend more time at the firm to research and evidence these issues. This increases the time of examinations and similarly increases the costs both to the regulatory agency conducting the examination and to the broker-dealer, which must provide additional documentation and staff time to answer the regulatory agency staff's questions.

B. Costs

The amendments were drafted to permit flexibility in the creation of records in order to reduce the costs to broker-dealers. In addition, records created pursuant to the proposed amendments would be subject to the Exchange Act Rule 17a–4 maintenance requirements, which provide a number of options as to how a broker-dealer may maintain records. This gives each broker-dealer the flexibility to choose the least costly method to comply with the rules based upon its present processes and systems capabilities.

In addition, the cost of these proposed amendments is difficult to ascertain because they would vary widely due to differences both in the amount of SFP business in which a broker-dealer may engage and the current recordkeeping systems employed by the broker-dealer.

1. Addition of Paragraph 15c3–3(o)

a. Establishment of a Written Policy

Pursuant to proposed paragraph (o)(1)(ii) of Rule 15c3–3, a Full FCM/Full BD that effects transactions in SFPs for customers must establish a written policy describing how customer SFP positions will be treated, and, if applicable, the process by which a customer may elect the regulatory scheme that will apply to an account. Only broker-dealers that decide to effect transactions in SFPs for customers must draft these policies. SRO rules presently require that a broker-dealer establish written procedures to supervise the types of business in which it engages.[81] Thus, a Full FCM/Full BD would need to establish these procedures regardless of this amendment to Rule 15c3–3.

[81] *E.g.,* NASD Rule 3010.

Accordingly, the SEC estimates there is no cost associated with this amendment.

b. Furnishing a Disclosure Document to Customers

Pursuant to proposed new paragraph (o)(2)(i) of Rule 15c3–3, a broker-dealer that effects transactions in SFPs for customers must provide each of those customers with a disclosure document containing certain information. The SEC believes there would be two costs associated with furnishing this disclosure document; the initial, one-time cost to create the document, and the cost of printing and sending the disclosure document to customers.

The SEC understands that various industry groups are working to create template disclosure documents for use by the broker-dealer and FCM community. The creation of a template should decrease the cost to broker-dealers; however, each broker-dealer that creates such a disclosure document will still need to review the available template(s) to determine whether the template satisfies the requirements of the proposed rule as applied to the broker-dealer's own business, and whether it wants to tailor the document for its own purposes. Rule 15c3–3 applies to clearing firms that will carry accounts in which SFPs are held for the benefit of customers. As of December 31, 2000, there were 425 registered broker-dealers doing a public business and not claiming an exemption from Rule 15c3–3 (''clearing and carrying firms''). In addition, only firms that plan to effect transactions in and hold SFPs for the benefit of customers will be required to comply with this rule. As of March 31, 2001, 90 broker-dealers were registered with the CFTC as FCMs, 63 of which are clearing and carrying firms. Based upon conversations between the SEC and industry representatives regarding the number of firms that may conduct a SFP business, the SEC Staff estimates that the number of firms that will decide to engage in this business, in addition to the broker-dealers already registered with the CFTC as FCMs, is 10% of the clearing and carrying firms not presently registered with the CFTC. Therefore, the SEC Staff estimates that approximately 100 firms (63 + ((425 − 63) × 10%))) will be required to create a disclosure document. For each firm that does create a disclosure document, the SEC Staff estimates (based on its experience) that, on average, one attorney will spend approximately 20 hours to create the disclosure document, and one senior attorney will spend approximately 8 hours reviewing and editing the document. According to the Securities Industry Association (''SIA''), the hourly cost of an attorney is approximately $156.00 [82] and the hourly cost of a deputy general counsel is $225.00.[83] Thus, the total, one-time cost of creating a disclosure document is approximately $492,000 (or (($156.00 × 20 hours) + ($225.00 × 8 hours)) × 100 broker-dealers).

The costs of printing the disclosure documents will be based on the number of customer accounts that will be opened to effect transactions in SFPs. At this time, it is not clear how many customers will want to engage in this type of business. As of December 31, 2000, broker-dealers reported that they maintained 97,600,000 customer accounts.[84] The SEC Staff estimates, based on conversations with industry groups, that 8% of these customers may engage in SFP transactions [85] (97,600,000 accounts × 8% = 7,808,000).

The costs of printing and sending the disclosure document to customers will be based on the number of customer accounts that will be opened by customers to effect transactions in SFPs. As discussed above, the SEC Staff estimates that 7,808,000 customers may engage in SFP transactions. In addition, the SEC Staff estimates that the cost of printing and sending each disclosure document will be approximately $.10 per document sent.[86] Thus, the cost of printing and sending the document required pursuant to proposed paragraph 15c3–3(o) will be approximately $780,800 (or (7,808,000 × $.10)).[87]

c. Obtaining an Acknowledgement From Customers

Pursuant to proposed new paragraph (o)(2)(ii) of Rule 15c3–3, a broker-dealer that effects transactions in SFPs for customers must obtain an acknowledgement from each such customer indicating that the customer understands which regulatory structure will apply and which will not apply to an account in which SFP transactions are effected or held. The SEC believes that broker-dealers will send the acknowledgement form to customers along with the disclosure document, thus substantially reducing the cost of sending the acknowledgement to customers. Aside from the postage costs, there are still costs that will be incurred relating to the development of the document and printing the documents to be sent. In addition, broker-dealers will incur processing costs relating to receipt, tracking, and filing the signed acknowledgements.

As an acknowledgement would be far more simple to create than a disclosure document, and in fact could be incorporated into the disclosure document, the SEC Staff estimates (based on its experience) that, on average, for each broker-dealer that creates these documents, one attorney will spend approximately 2 hours to create the acknowledgement or that portion of the disclosure document that must be returned by the customer as an acknowledgement, and one senior attorney will spend approximately 1 hour reviewing and editing the document. As stated above, the SEC Staff estimates that 100 broker-dealers will create an acknowledgement. According to the SIA, the hourly cost of an attorney is approximately $156.00 [88] and the hourly cost of a deputy general counsel is $225.00.[89] Thus, the total, one-time cost of creating an acknowledgement or that portion of the disclosure document that must be returned by the customer as an acknowledgement is approximately $53,700 (or ($156.00 × 2) + ($225.00 × 1) × 100 broker-dealers).

The costs of printing the acknowledgement to be sent as part of or along with the disclosure document to customers will be based on the number of customer accounts that will be opened to effect transactions in SFPs. The SEC Staff estimates that the cost of printing each acknowledgement will be, on average, approximately $.045 per document sent.[90] As discussed above, the SEC Staff estimates that 7,808,000 customers may want to engage in SFP transactions. Thus, the total cost of printing the acknowledgement will be approximately $351,360 (or (7,808,000 × $.045)).[91]

When the customer returns these acknowledgements, the broker-dealer will need to process and file them. All

[82] Based on the SIA's *Report on Management and Professional Earnings in the Securities Industry 2000,* Tables 107 (Attorney) and 108 (Compliance Attorney) plus 35% overhead.

[83] Based on the SIA's *Report on Management and Professional Earnings in the Securities Industry 2000,* Table 110 (Deputy General Counsel) plus 35% overhead.

[84] December 31, 2000, FOCUS Schedule 1 filings.

[85] The SEC Staff derived its estimate from the number of active options accounts and conversations with industry representatives.

[86] This estimate is based on past conversations with industry representatives regarding other rule changes which required similar printing and postage costs. Postage may be minimized by including the disclosure document with other information mailed to customers.

[87] However, it should be noted that the SEC Staff believes it to be unlikely that broker-dealers will experience 100% turnover in the number of SFP accounts, so these costs may decrease in subsequent years.

[88] *See* note 82.

[89] *See* note 83.

[90] *See* note 86.

[91] *See* note 87.

customers that want to effect transactions in SFPs will need to return the acknowledgement. Therefore, based on the above estimates, broker-dealers will need to process 7,808,000 acknowledgements. The SEC Staff estimates that it will take 5 minutes to process each acknowledgement.[92] The SEC Staff believes that a broker-dealer would have a new accounts clerk process the acknowledgements as part of the required account documents. According to the SIA, the hourly cost of a new accounts clerk is approximately $23.40.[93] Thus, the total cost of processing these acknowledgements will be approximately $15.2 million (($23.40 per hour × (5min/60min)) × 7,808,000 accounts).[94]

d. Creation of a Record of Changes of Account Type

Pursuant to proposed new paragraph (o)(3)(i) of Rule 15c3–3, a broker-dealer that changes the type of account in which a customer's SFPs are held must create a record of each change in account type that includes the name of the customer, the account number, the date the broker-dealer received the customer's request to change the account type, and the date the change in account type took place. The SEC Staff believes that not all broker-dealers that effect transactions in SFPs for customers will allow for changes in account type. To the extent that a broker-dealer does provide for changes of account type, these data items are the type of information that would be easily accessed or created and maintained; therefore the SEC Staff believes the costs of maintaining this information will be minimal. As discussed above, the SEC Staff estimates that 7,808,000 customers may want to engage in SFP transactions. Further, the SEC Staff estimates that at most 20% per year may change account type.[95] Thus, broker-dealers would be required to create this record for, at most, 1,561,600 accounts (or 7,808,000 accounts × 20%). The SEC Staff believes that broker-dealers will have operations clerks create this record, and estimates that it will take an operations clerk approximately 3 minutes to create each record.[96] According to the SIA, the hourly cost of an operations specialist is approximately $42.00.[97] Thus, the total annual cost of creating this record of change of account type will be, at most, $3,279,360 (or ((1,561,600 accounts × (3min/60min)) × $42.00).

e. Obtaining an Acknowledgement from Customers

Pursuant to proposed new paragraph (o)(3)(ii) of Rule 15c3–3, a broker-dealer that changes the type of account in which a customer's SFPs are held must obtain an acknowledgement from each customer whose account type was changed indicating that the customer understands which regulatory structure will apply and which will not apply to that account. As discussed above, the SEC Staff estimates that, at most, 1,561,600 accounts per year may change account type; thus, broker-dealers would be required to obtain an acknowledgement from, at most, 1,561,600 customers per year. The SEC Staff believes that a broker-dealer would have a new accounts clerk process the acknowledgements as part of the required account documents, and that it would take the new accounts clerk approximately 5 minutes to process each acknowledgement. According to the SIA, the hourly cost of a new accounts clerk is approximately $23.40.[98] Thus, the total cost of processing these acknowledgements will be approximately $3 million (($23.40 × (5min/60min)) × 1,561,600 accounts).

f. Customer Notification of Effective Date of Change of Account Type

Pursuant to proposed new paragraph (o)(3)(iii) of Rule 15c3–3, a broker-dealer that changes the type of account in which a customer's SFPs are held must promptly notify the customer in writing of the date that change became effective. The SEC Staff believes that there are two costs associated with providing this notification to customers: The initial, one-time cost to draft the notification, and the cost of printing and sending the notification to customers.

The SEC Staff estimates (based on its experience) that, on average, one attorney will spend approximately 3 hours to create the notification, and one senior attorney will spend approximately 30 minutes reviewing and editing the document. According to the SIA, the hourly cost of an attorney is approximately $156.00[99] and the hourly cost of a deputy general counsel is $225.00.[100] Thus, the total, one-time cost of drafting the notification is approximately $58,050 (or ((156.00 × 3 hours) + ($225 × (30 min/60 min))) × 100 broker-dealers)).

As discussed above, the SEC estimates that 1,561,600 accounts per year may change account type; thus, broker-dealers would be required to send this notification to 1,561,600 customers. The SEC Staff believes that firms will use the least cost method to comply with these requirements, and will probably include this notification with other mailings sent to the customer. The SEC Staff estimates that the cost of printing and posting each notification will be approximately $.10 per document sent.[101] Therefore, the SEC Staff estimates that the cost of sending this notification to customers will be $156,160 (1,561,600 accounts × $.10).

2. Amendments to Rule 17a–4

The proposed amendments to Rule 17a–4 clarify that the records required to be created pursuant to new paragraph 15c3–3(o) must be maintained for at least three years, the first two in an easily accessible place. Once the broker-dealer files these records, the cost to maintain them is minimal. The SEC believes that the main cost would be the cost to assure that the broker-dealer is in compliance with the rule. The SEC Staff estimates that, on average, one compliance person will spend approximately 1 hour per year to assure that the broker-dealer is in compliance with the record maintenance provisions of paragraph 17a–4(b)(9) as it relates to new paragraph 15c3–3(o). According to the SIA, the hourly cost of a compliance manager is approximately $101.25.[102] Thus, the total yearly cost of assuring compliance with the proposed amendment to Rule 17a–4 is approximately $10,125 (or (101.25 × 1 hour) × 100 broker-dealers).

New paragraph 17a–4(k) would require a broker-dealer that engages in a SFP business, upon request of the SEC,

[92] As the majority of clearing and carrying firms use automated account recordkeeping systems, the SEC Staff believes that ''processing'' would consist of; accessing the customer account record and noting receipt of the acknowledgement, then filing or scanning the acknowledgement. This estimate is based on representations made by industry representatives relating to other rule changes that included similar processing requirements.

[93] Based on the SIA's *Report on Office Salaries In the Securities Industry 2000,* Table 062 (New Accounts Clerk) plus 35% overhead.

[94] *See* note 87.

[95] The SEC Staff does not believe that all broker-dealers that choose to engage in an SFP business will allow for changes of account type because it may be costly to do so. In addition, it is unlikely that many customers will change their account type once they have signed an acknowledgement. To the best of the SEC Staff's knowledge, there is no existing similar procedure to use as a basis for comparison.

[96] In fact, the SEC Staff believes that most firms will have this process automated. To the extent that no person need be involved in the generation of this record, the costs will be minimal.

[97] Based on the SIA's *Report on Office Salaries In the Securities Industry 2000,* Table 119 (Operations Specialist) plus 35% overhead.

[98] *See* note 93.

[99] *See* note 82.

[100] *See* note 83.

[101] *See* note 86.

[102] Based on the SIA's *Report on Management and Professional Earnings in the Securities Industry 2001,* Table 051 (Compliance Manager) plus 35% overhead.

to request from its customers and provide to the SEC documentation of cash transactions underlying exchanges of security futures products for the underlying security(ies). Broker-dealers can include an agreement that customers provide the broker-dealer with this documentation in many other account opening agreements or in the acknowledgement document, which must be created and the cost of which is discussed above. It has not yet been determined whether SFPs will be cash settled or physically settled. In addition, this is not a record which the broker-dealer would be required to create or maintain on a regular basis, but instead, a broker-dealer would create this record only when specifically requested by the SEC.

The SEC Staff believes this requirement to be analogous to bluesheet requests made by the SEC to broker-dealers. Bluesheet requests are only sent to clearing firms, 661 of which were registered with the SEC as of December 31, 2000.[103] The SEC sent 32,278 bluesheet request letters to 294 broker-dealers from January 1, 2000 to December 31, 2000. Thus, 45% of the broker-dealers that could be affected received letters, and those broker-dealers that did receive letters received, on average, 110 letters each. Therefore, the SEC Staff estimates that 45 clearing and carrying firms that engage in SFP business will receive approximately 110 requests for the information required to be collected and provided pursuant to proposed paragraph (k) of Rule 17a–4, or a total of 4,950 requests. The SEC Staff estimates (based on its experience) that it will take approximately 2 hours for a compliance manager to respond to a request to provide this information to a regulator. Therefore, the SEC Staff believes that it would take a total of approximately 9,900 hours, for a total cost of $1,002,375 per year for broker-dealers to comply with this requirement ((4,950 requests x 2 hours per request) = 9,900 hours per year; (9,900 hours per year × $101.25 per hour[104] = $1,002,375).

3. Systems Changes

The SEC Staff believes that broker-dealers may need to update their systems to provide for the printing and sending of disclosure documents and acknowledgements to SFP customers, and to create and maintain information as to changes of account type. The SEC Staff further believes, based on conversations with industry representatives, that many broker-dealers have not yet updated their systems to provide for the trading and processing of SFPs as certain specifications of these products have not been finalized. Due to this, the Staff believes that any systems coding changes needed to comply with the proposed amendments to Rules 15c3–3, 17a–3, 17a–4, 17a–5, 17a–7, 17a–11, and 17a–13 could be incorporated into the initial coding for these products, thus greatly decreasing the costs generally associated with systems changes. Therefore, the SEC Staff estimates that it may cost the broker-dealers engaging in this business approximately $2.4 million[105] to update their systems to comply with the proposed amendments to Rules 15c3–3, 17a–3, 17a–4, 17a–5, 17a–7, 17a–11, and 17a–13.

VII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[106] provides that whenever the SEC is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the SEC shall consider whether the action will promote efficiency, competition, and capital formation. The proposed amendments, which are intended to allow firms that plan to effect transactions in and hold SFPs for the benefit of customers a method to choose which type of regulatory structure will be applied to those customer positions, should serve as an efficient and cost-effective means for those entities to reconcile their conflicting customer protection and segregation requirements with respect to SFPs. These amendments should promote efficiency because they allow firms the flexibility to utilize their present systems for processing SFPs, allow firms and/or customers to choose the regulatory scheme that will be applied to accounts in which customer SFP positions are held, and educate customers regarding the different regulatory schemes, which may be applicable to their accounts, that serve to protect their assets.

Section 23(a)(2) of the Exchange Act[107] requires the SEC, in adopting Exchange Act rules, to consider the impact any such rule would have on competition and to not adopt a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. The SEC preliminarily believes the proposed amendments are necessary to eliminate conflicting or duplicative rules regarding customer protection and recordkeeping applicable to SFPs. The proposed amendments would allow Full FCM/Full BDs the flexibility to choose whether SFPs will be held in a futures account (subject to the CEA segregation requirements) or a securities account (subject to the Exchange Act and SIPA requirements), and consequently whether certain CEA or Exchange Act recordkeeping and reporting requirements, as well as requirements to reconcile all positions at least quarterly, will apply. This allows these Full FCM/Full to apply whatever regulatory scheme would be less burdensome. The proposed amendments would also exempt certain Notice BDs from Exchange Act Rules 17a–3, 17a–5, 17a–7, 17a–11, and 17a–13 because the CFTC has similar rules that would apply to these firms. Because the purpose of the proposed amendments is to eliminate conflicting and duplicative regulation with relation to Exchange Act section 15c(3) and 17(a)[108] in light of the CFMA, the SEC preliminarily believes that our proposals will not create any anti-competitive effects and in fact should promote competition by decreasing the costs associated with engaging in an SFP business.

The SEC requests comment on whether the proposed amendments are expected to promote efficiency, competition, and capital formation.

VIII. Summary of Regulatory Flexibility Act Certification

CFTC

The Regulatory Flexibility Act (''RFA'')[109] requires that agencies, in proposing rules, consider the impact of those rules on small businesses.[110] The proposed rules would apply to firms that are registered with the CFTC as FCMs. The CFTC has previously established certain definitions of ''small entities'' to be used by the CFTC in evaluating the impact of its rules on such entities in accordance with the RFA.[111] The CFTC has previously determined that FCMs are not small entities for the purpose of the RFA.[112] In defining ''small entities'' for the purpose of the RFA, the CFTC excluded FCMs based on the fiduciary nature of FCM-customer relationships and the minimum financial requirements that

[103] *See* note 84.

[104] *See* note 102.

[105] This estimate is based on representations made by industry representatives relating to other rule changes that included similar systems modifications.

[106] 15 U.S.C. 78c(f).

[107] 15 U.S.C. 78w(a)(2).

[108] 5 U.S.C. 78*o*(c)(3) and 15 U.S.C. 78q(a).

[109] 5 U.S.C. 601 *et seq.*

[110] 5 U.S.C. 603(a).

[111] 47 FR 18618 (April 30, 1982)

[112] *Id.* at 18619.

apply to FCMs.[113] Accordingly, the Acting Chairman, on behalf of the CFTC, certifies pursuant to Section 5(b) of the RFA [114] that the proposed rules will not have a significant economic impact on a substantial number of small entities.

SEC

Section 3(a) of the RFA [115] requires the SEC to undertake an initial regulatory flexibility analysis of the effects of proposed rules and rule amendments on small entities, unless the SEC Chairman certifies that the rules and rule amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.[116]

These proposed amendments to Rules 15c3–3 and 17a–4 would only apply to firms that plan to effect transactions in and hold SFPs for the benefit of customers. In addition, these provisions would apply only to broker-dealers that carry customer funds, securities or property and do not claim an exemption from Rule 15c3–3 (''clearing and carrying firms''). As of December 31, 2000, there were 425 registered clearing and carrying firms. As of March 31, 2001, 90 broker-dealers were registered with the CFTC as FCMs, 63 of which are clearing and carrying firms. Of these clearing and carrying firms registered with the SEC, 16 would be considered to be small entities,[117] none of which is registered with the CFTC as a FCM. In conversations with the SEC Staff, broker-dealers have expressed the view that they are uncertain as to how many firms, aside from those that are already registered with the CFTC to engage in a commodity and futures business, will conduct a SFP business. Based upon these conversations, the Staff estimates that the number of firms that will decide to engage in this business, in addition to the broker-dealers already registered with the CFTC as FCMs, is 10% of the clearing and carrying firms not presently registered with the CFTC. Thus, the Staff estimates that approximately 100 firms (63 + $((425 - 63) \times 10\%)$)) will be required to comply with these proposed amendments. Using the 10% estimate, the Staff believes that up to two small business entities may decide to engage in this type of business and therefore could be affected by the proposed amendments, but that the proposed amendments would not have a significant economic impact on a substantial number of small business entities.

The SEC Chairman has certified that the proposed rules and 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.

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

IX. Text of Proposed Rules

List of Subjects

17 CFR Part 1

Consumer protection, Definitions, Reporting and recordkeeping requirements.

17 CFR Part 41

Security futures products, Customer protection.

17 CFR Part 190

Consumer protection, Definitions, Reporting and recordkeeping requirements.

17 CFR Part 240

Brokers, Customer protection, Dealers, Securities.

17 CFR Chapter I

Commodity Futures Trading Commission.

In accordance with the foregoing, the Commodity Futures Trading Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

2. Section 1.3 is amended by adding paragraphs (gg)(4), (vv) and (ww) to read as follows:

§ 1.3 Definitions.

* * * * *

(gg) * * *

(4) Notwithstanding paragraphs (gg)(1), (2) and (3) of this section, the term customer funds shall exclude money, securities or property held to margin, guarantee or secure security futures products held in a securities account, and all money accruing as the result of such security futures products.

* * * * *

(vv) *Futures account.* This term means an account governed by the segregation requirements of Section 4d of the Commodity Exchange Act and the rules thereunder.

(ww) *Securities account.* This term means an account governed by the reserve requirements of Section 15 of the Securities Exchange Act of 1934 and the rules thereunder.

3. Section 1.55 is amended by adding paragraph (h) to read as follows:

§ 1.55 Distribution of ''Risk Disclosure Statement'' by futures commission merchants and introducing brokers.

* * * * *

(h) Notwithstanding any other provision of this section or § 1.65, a person registered or required to be registered with the Commission as a futures commission merchant pursuant to Sections 4f(a)(1) or 4f(a)(2) of the Commodity Exchange Act and registered or required to be registered with the Securities and Exchange Commission as a broker or dealer pursuant to Sections 15(b)(1) or 15(b)(11) of the Securities Exchange Act of 1934 and rules thereunder must provide to a customer or prospective customer, prior to the acceptance of any order for, or otherwise handling any transaction in or in connection with, a security futures product for a customer, the disclosures set forth in § 41.42(b)(1) of this chapter.

---

[113] *Id.*

[114] 5 U.S.C. 605(b).

[115] *See* note 110.

[116] *See* note 114.

[117] Pursuant to 17 CFR § 240.0–10, ''the term *small business* or *small organization* shall: [* * *] (c) [w]hen used with reference to a broker or dealer, mean a broker or dealer that: (1) [h]ad total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which is audited financial statements were prepared pursuant to § 240.17–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) [i]s not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section * * *'' (17 CFR § 240.0–10(c)). Further, pursuant to § 240.0–10(i), ''[f]or purposes of paragraph (c) of this section, a broker or dealer is affiliated with another person if [* * *] [s]uch broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis.'' (17 CFR § 240.0–10(i)).

PART 41—SECURITY FUTURES PRODUCTS

4. The authority citation for Part 41 continues to read as follows:

Authority: Section 252, Pub. L. 106–554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a-2, 12a.

5. Section 41.42 is added to read as follows:

§ 41.42 Security futures products accounts.

(a) *Where security futures products may be held.* (1) A person registered with the Commission as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act (''CEA'') and registered with the Securities and Exchange Commission (''SEC'') as a broker or dealer pursuant to Section 15(b)(1) of the Securities Exchange Act of 1934 (''Securities Exchange Act'') (''Full FCM/Full BD'') may hold a customer's security futures products in a futures account or a securities account. A person registered with the Commission as a futures commission merchant pursuant to Section 4f(a)(2) of the CEA (a notice-registered FCM) may hold a customer's security futures products only in a securities account. A person registered with the SEC as a broker or dealer pursuant to Section 15(b)(11) of the Securities Exchange Act (a notice-registered broker-dealer) may hold a customer's security futures products only in a futures account.

(2) If the futures commission merchant is also a broker or dealer registered pursuant to Section 15(b)(1) of the Securities Exchange Act, the futures commission merchant shall establish a written policy describing whether customer security futures products will be placed in a futures account or a securities account and, if applicable, the process by which a customer may elect the type of account in which security futures products will be held (including the procedure to be followed if a customer fails to make an election of account type).

(b) *Disclosure requirements.* Before a futures commission merchant accepts an order for a security futures product from a customer, the firm shall:

(1) Furnish the customer with a disclosure document containing the following information:

(i) A description of the protections provided by the requirements set forth under Section 4d of the CEA applicable to a futures account;

(ii) A description of the protections provided by the requirements set forth under Securities Exchange Act Rule 15c3–3 and the Securities Investor Protection Act of 1970 applicable to a securities account;

(iii) A statement indicating whether the customer's security futures products will be held in a futures account or a securities account, or whether the firm permits customers to make or change an election of account type; and

(iv) A statement that, with respect to holding the customer's security futures products in a securities account or a futures account, the alternative regulatory scheme is not available to the customer in connection with that account.

(2) Obtain an acknowledgement that includes the dated signature of each owner of the account stating that the customer understands that the account will not be protected under the alternative regulatory scheme, if the futures commission merchant is also a broker or dealer registered pursuant to Section 15(b)(1) of the Securities Exchange Act.

(c) *Changes in account type.* A Full FCM/Full BD may change the type of account in which a customer's security futures products will be held, *Provided,* That:

(1) The firm shall create a record of each change in account type, including the name of the customer, the account number, the date the firm received the customer's request to change the account type, if applicable, and the date the change in account type became effective;

(2) Before the date the change in account types becomes effective, the firm must obtain an acknowledgement that includes the dated signature of each owner of the account stating that the customer understands that the account in which the security futures products will be held will not be protected pursuant to the alternative regulatory scheme; and

(3) The firm shall promptly notify the customer in writing of the date that the change became effective.

(d) *Recordkeeping requirements.* The Commission's recordkeeping rules shall apply to security futures products held in a futures account. The SEC's recordkeeping rules shall apply to security futures products held in a securities account and compliance therewith is required under this section.

(e) *Reports to customers.* The Commission's reporting requirements set forth in §§ 1.33 and 1.46 of this chapter shall apply to futures commission merchants holding security futures products in a futures account.

(f) *Segregation of customer funds.* All money, securities, or property held to margin, guarantee or secure security futures products held in a futures account, or accruing to customers as a result of such products, are subject to the segregation requirements of Section 4d of the CEA and the rules thereunder.

PART 190—BANKRUPTCY

6. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6c, 6d, 6g, 7a, 12, 19 and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, unless otherwise noted.

7. Section 190.01 is amended by revising paragraph (f) and by adding paragraph (kk)(9) to read as follows:

§ 190.01 Definitions.

* * * * *

(f) *Commodity broker* means any person who is registered or required to register as a futures commission merchant under the Commodity Exchange Act including a person registered or required to be registered as such under parts 32 and 33 of this chapter, and a ''commodity options dealer,'' ''foreign futures commission merchant,'' ''clearing organization,'' and ''leverage transaction merchant'' with respect to which there is a ''customer'' as those terms are defined in this section, but excluding a person registered as a futures commission merchant under section 4f(a)(2) of the Commodity Exchange Act.

* * * * *

(kk) * * *

(9) Notwithstanding any other provision of this paragraph (kk), security futures products, and any money, securities or property held to margin, guarantee or secure such products, or accruing as a result of such products, shall not be considered specifically identifiable property for the purposes of Subchapter IV of the Bankruptcy Code or this part 190, if held in a securities account.

* * * * *

8. Section 190.02 is amended by:

a. Removing the period and in its place adding a '';'' at the end of paragraph (d)(8);

b. Redesignating paragraphs (d)(11) and (d)(12) as paragraphs (d)(12) and (d)(13), respectively; and

c. Adding a new paragraph (d)(11).

The revisions and additions read as follows:

§ 190.02 Operation of the debtor's estate subsequent to the filing date and prior to the primary liquidation date.

* * * * *

(d) * * *

(11) Whether the claimant's positions in security futures products are held in a futures account or a securities account, as these terms are defined in

§§ 1.3(vv) and (ww) of this chapter, respectively;

* * * * *

9. Section 190.07 is amended by revising paragraph (b)(1)(iii)(B)(*3*) and removing the undesignated paragraph following (b)(1)(iii)(B)(*3*) to read as follows:

§ 190.07 Calculation of allowed net equity.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) * * *

(3) The normal costs attributable to the payment of commissions, brokerage, interest, taxes, storage, transaction fees, insurance and other costs and charges lawfully incurred in connection with the purchase, sale, exercise, or liquidation of any commodity contract in such account. For purposes of this paragraph (b)(1), the open trade balance of a customer's account shall be computed by subtracting the unrealized loss in value of the open commodity contracts held by or for such account from the unrealized gain in value of the open commodity contracts held by or for such account. In calculating the ledger balance or open trade balance of any customer, exclude any security futures products, any gains or losses realized on trades in such products, any property received to margin, guarantee or secure such products (including interest thereon or the proceeds thereof), to the extent any of the foregoing are held in a securities account, and any disbursements to or on behalf of such customer in connection with such products or such property held in a securities account.

* * * * *

10. Section 190.08 is amended by revising paragraphs (a)(2)(v) and (a)(2)(vi) and by adding paragraph (a)(2)(vii) to read as follows:

§ 190.08 Allocation of property and allowance of claims.

* * * * *

(a) * * *

(2) * * *

(v) Property deposited by a customer with a commodity broker after the entry of an order for relief which is not necessary to meet the maintenance margin requirements applicable to the accounts of such customer;

(vi) Property hypothecated pursuant to § 1.30 of this chapter to the extent of the loan of margin with respect thereto; and

(vii) Money, securities or property held to margin, guarantee or secure security futures products, or accruing as a result of such products, if held in a securities account.

* * * * *

11. Section 190.10 is amended by adding paragraph (h) to read as follows:

§ 190.10 General.

* * * * *

(h) *Rule of construction.* Contracts in security futures products held in a securities account shall not be considered to be ''from or for the commodity futures account'' or ''from or for the commodity options account'' of such customers, as such terms are used in section 761(9) of the Bankruptcy Code.

12. Appendix A to Part 190 is amended by adding Item III g. to BANKRUPTCY APPENDIX FORM 4—PROOF OF CLAIM to read as follows:

APPENDIX A TO PART 190—BANKRUPTCY FORMS

* * * * *

BANKRUPTCY APPENDIX FORM 4—PROOF OF CLAIM

* * * * *

* * * * *

III. * * *

g. Whether the claimant's positions in security futures products are held in a futures account or a securities account, as these terms are defined in §§ 1.3(vv) and (ww) of this chapter, respectively.

* * * * *

By the Commodity Futures Trading Commission.

Dated: September 26, 2001.

Jean A. Webb,

Secretary of the Commission.

Securities and Exchange Commission

17 CFR Chapter II

The amendments are proposed pursuant to the authority conferred on the Securities and Exchange Commission by the Exchange Act, including Sections 3(b), 15(c)(3), 17(a), and 23(a).

In accordance with the foregoing, the Securities and Exchange Commission hereby proposes that Title 17 Chapter II of the Code of Federal Regulations be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 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.

* * * * *

Section 240.15c3–3 is also issued under Secs. 15(c)(2), 15(c)(3), 17(a), 23(a), 48 Stat. 895, 897, 901, secs. 3, 4, 8, 49 Stat. 1377, 1379, secs. 2, 5, 52, Stat. 1075, 1076, sec. 7(d), 84 Stat. 1653; 15 U.S.C. 78*o*(c), 78q(a), 78w(a); sec. 6(c), 84 Stat. 1652; 15 U.S.C. 78fff.

Section 240.15c3–3(o) is also issued under Pub. L. 106–554, 114 Stat. 2763, section 203.

* * * * *

2. The authority citation following § 240.15c3–3, is removed.

3. Section 240.15c3–3 is amended by:

a. Amending paragraph (a)(1) by adding a new sentence following the fourth sentence;

b. Adding paragraphs (a)(l4) and (a)(15); and

c. Adding paragraph (o).

The revisions and additions read as follows:

§ 240.15c3–3 Customer protection—reserves and custody of securities.

(a) * * *

(1) * * * In addition, the term shall not include a person to the extent that the person has a claim for security futures products held in a futures account. * * *

* * * * *

(14) The term *securities account* shall mean the account of a customer.

(15) The term *futures account* (also referred to as ''commodity account'') shall mean an account in which security futures products are held but which is not otherwise a securities account.

* * * * *

(o) *Security futures products*—(1) *Where security futures products shall be held.* A broker or dealer registered with the Commission pursuant to 15(b)(1) of the Act (15 U.S.C. 78*o*(b)(1)) that is also a futures commission merchant registered pursuant to Section 4f(a)(1) of the Commodity Exchange Act (7 U.S.C. 6f(a)(1)):

(i) May hold a customer's security futures products in a securities account or a futures account; and

(ii) Shall establish a written policy describing whether customer security futures products will be placed in a securities account or a futures account and, if applicable, the process by which a customer may elect the type of account in which security futures products will be held (including the procedure to be followed if a customer fails to make an election of account type).

(2) *Disclosure and record requirements.* Before a broker or dealer accepts an order for a security futures product from a customer, the broker or dealer shall:

(i) Furnish the customer with a disclosure document containing the following information:

(A) A description of the protections provided by the requirements set forth under this section and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*) applicable to a securities account;

(B) A description of the protections provided by the requirements set forth under Section 4d of the Commodities Exchange Act (7 U.S.C. 6d) applicable to a futures account;

(C) A statement indicating whether the customer's security futures products will be held in a securities account or futures account, or whether the firm permits customers to make or change an election of account type; and

(D) A statement that, with respect to holding the customer's security futures products in a securities account or a futures account, the alternative regulatory scheme is not available to the customer with relation to that account.

(ii) Obtain, if the broker or dealer is also a futures commission merchant registered pursuant to Section 4f(a)(1) of the Commodity Exchange Act (7 U.S.C. 6f(a)(1)), an acknowledgement, that includes the dated signature of each owner of the account, stating that the customer understands that the account will not be protected under the alternative regulatory scheme.

(3) *Changes in account type.* A broker or dealer registered with the Commission pursuant to section 15(b)(1) of the Act (15 U.S.C. 78*o*(b)(1)) that is also a futures commission merchant registered pursuant to Section 4f(a)(1) of the Commodity Exchange Act (7 U.S.C. 6f(a)(1)) may change the type of account in which a customer's security futures products will be held, *Provided* that:

(i) The broker or dealer shall create a record of each change in account type, including the name of the customer, the account number, the date the broker or dealer received the customer's request to change the account type, if applicable, and the date the change in account type became effective.

(ii) Before the date the change in account types becomes effective, the broker-dealer must obtain an acknowledgement that includes the dated signature of each owner of the account, stating that the customer understands that the account in which the security futures products will be held will not be protected under the alternative regulatory scheme.

(iii) The broker or dealer shall promptly notify the customer in writing of the date that the change became effective.

4. Section 240.17a–3 is amended by adding paragraph (f) to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

* * * * *

(f) *Security futures products.* The provisions of this section shall not apply to:

(1) A broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78*o*(b)(11)(A)) to the extent that it holds or effects transactions in security futures products in a futures account (as that term is defined in § 240.15c3–3(a)(15)); and

(2) A broker or dealer registered pursuant to section 15(b)(1) of the Act (15 U.S.C. 78*o*(b)(1)) that is also a futures commission merchant registered pursuant to section 4f(a)(1) of the Commodity Exchange Act (7 U.S.C. 6f(a)(1)), to the extent that it holds or effects transactions in security futures products in a futures account (as that term is defined in § 240.15c3–3(a)(15)).

5. Section 240.17a–4 is amended by revising paragraph (b)(9) and adding paragraph (k) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(9) The records required to be made pursuant to § 240.15c3–3(d)(4) and (o).

* * * * *

(k) Every member, broker or dealer subject to this section that engages in the business of effecting transactions in or holding security future products shall, upon request of representatives of the Commission, request from its customers and, upon receipt thereof, provide to those representatives documentation of cash transactions underlying exchanges of security futures products for securities or exchanges of security futures products in connection with securities transactions.

6. Section 240.17a–5 is amended by redesignating paragraph (a)(5) as paragraph (a)(6) and adding new paragraph (a)(5) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

(a) * * *

(5) The provisions of this paragraph (a) shall not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78*o*(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78*o*–3(a)).

* * * * *

7. Section 240.17a–7 is amended by:

a. Removing from paragraphs (a)(1) and (a)(2) the words ''paragraph (b)'' and in their place adding ''paragraphs (b) and (c)''; and

b. Redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) read as follows:

§ 240.17a–7 Records of non-resident brokers and dealers.

* * * * *

(c) The provisions of this section shall not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78*o*(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78*o*–3(a)).

* * * * *

8. Section 240.17a–11 is amended by adding new paragraph (i) to read as follows:

§ 240.17a–11 Notification provisions for brokers and dealers.

* * * * *

(i) The provisions of this section shall not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78*o*(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78*o*–3(a)).

9. Section 240.17a–13 is amended by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 240.17a–13 Quarterly security counts to be made by certain exchange members, brokers, and dealers.

* * * * *

(e) The provisions of this section shall not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78*o*(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78*o*–3(a)).

* * * * *

By the Securities and Exchange Commission.

Dated: September 26, 2001.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

APPENDIX A

Regulatory Flexibility Act Certification

I, Harvey L. Pitt, Chairman of the Securities and Exchange Commission (the ''Commission''), hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rules 15c3–3, 17a–3, 17a–4, 17a–5, 17a–7, 17a–11 and 17a–13 under the Securities Exchange Act of 1934 (17 CFR §§ 240.15c3–3, 240.17a–3, 240.17a–4, 240.17a–5, 240.17a–7, 240.17a–11, and 240.17a–13 respectively), would not, if adopted, have a significant economic impact on a substantial number of small entities. These proposed amendments would eliminate conflicting and duplicative regulation relating to the manner in which certain Commission and Commodity Futures Trading Commission customer protection, recordkeeping, reporting, telegraphic notice, and quarterly securities count requirements apply to security futures products.

The proposed amendments would apply only to firms that plan to effect transactions in and hold security futures products for the benefit of customers. In addition, these provisions would apply only to broker-dealers that carry customer funds, securities, or property and do not claim an exemption from Rule 15c3–3.

Accordingly, the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.

Dated: September 25, 2001.

Harvey L. Pitt,

Chairman.

[FR Doc. 01–24573 Filed 10–3–01; 8:45 am]

BILLING CODE 6351–01–P; 8001–01–P

Federal Register

Thursday,
October 4, 2001

Part VII

The President

Presidential Determination No. 2001–27 of September 18, 2001—Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

Federal Register
Vol. 66, No. 193
Thursday, October 4, 2001

Presidential Documents

Title 3—

The President

Presidential Determination No. 2001–27 of September 18, 2001

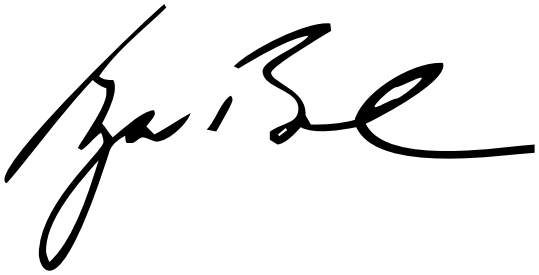
Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada, the subject of litigation in *Kasza v. Browner* (D. Nev. CV–S–94–795–PMP) and *Frost v. Perry* (D. Nev. CV–S–94–714–PMP), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning the operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 18, 2001.

[FR Doc. 01–25180
Filed 10–3–01; 10:55 am]
Billing code 3910–01–M

Reader Aids

Federal Register

Vol. 66, No. 193

Thursday, October 4, 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)	**523–3447**
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, OCTOBER

49823–50094 1
50095–50286 2
50287–50524 3
50525–50808 4

CFR PARTS AFFECTED DURING OCTOBER

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

Proclamations:
7471 50097
7472 50099
7473 50287
7474 50289
7475 50525
7476 50527

Executive Orders:
11145 (Amended by EO 13225) 50291
11183 (Amended by EO 13225) 50291
11287 (Amended by EO 13225) 50291
12313 (Amended by EO 13225) 50291
12382 (Amended by EO 13225) 50291
12196 (Amended by EO 13225) 50291
12216 (Amended by EO 13225) 50291
12345 (Amended by EO 13225) 50291
12367 (Amended by EO 13225) 50291
12882 (Revoked by EO 13226) 50523
12900 (Amended by EO 13225) 50291
12905 (Amended by EO 13225) 50291
12907 (Revoked by EO 13226) 50523
13021 (Amended by EO 13225) 50291
13080 (Amended by EO 13225) 50291
13075 (Amended by EO 13225) 50291
13090 (Amended by EO 13225) 50291
13134 (Amended by EO 13225) 50291
13138 (Amended by EO 13225) 50523
13138 (Amended by EO 13226) 50291
13168 (Amended by EO 13225) 50291
13225 50291
13226 50523

Administrative Orders:
Presidential Determinations:
No. 2001–27 of September 18, 2001 50807
No. 2001–28 of September 22, 2001 50095

5 CFR

1604 50712

10 CFR

Proposed Rules:
431 50355

11 CFR

Proposed Rules:
100 50359
114 50359
117 50359

12 CFR

950 50293
951 50296
952 50293

Proposed Rules:
Ch. IX 50366

14 CFR

35 50302
39 ..... 49823, 49825, 50304, 50306, 50307, 50529
71 50101
73 50310
91 50531

Proposed Rules:
39 ..... 50125, 50578, 50580, 50582, 50584, 50586, 50588

15 CFR

14 49827
742 50090
744 50090

17 CFR

230 50102
232 49829
239 50102
240 50103
270 50102
274 50102

Proposed Rules:
1 50786
41 ..... 50720, 50786
190 50786
230 50744
232 50744
239 50744
240 ..... 49877, 50744, 50786
242 50720
249 50744
269 50744

18 CFR

Proposed Rules:
Ch. 1 50591

19 CFR

10 50534
122 50103

163....50534

22 CFR

41....49830

24 CFR

888....50024
985....50004

25 CFR

Proposed Rules:
580....50127

26 CFR

301....50541
602....50541

27 CFR

9....50564

29 CFR

102....50310
Proposed Rules:
470....50010

31 CFR

586....50506
587....50506

33 CFR

110....50315
160....50565
165 .....50105, 50106, 50108, 50315
Proposed Rules:
155....49877
156....49877

38 CFR

Proposed Rules:
3....49886
4....49886
17....50594
20....50318

40 CFR

52....50319
60....49830, 50110
61....50110
62....49834
63 .....50110, 50116, 50504
70 .....49837, 49839, 50321, 50325, 50574
271....49841
180....50329
261....50332
403....50334
Proposed Rules:
51....50135
52....50252, 50375
60....49894
62....49895
63....50135, 50768
70 .....49895, 50136, 50375, 50378, 50379
261....50379
271....49896
300....50380

45 CFR

Ch. V....49844

46 CFR

32....49877

47 CFR

73....50576
Proposed Rules:
64....50139, 50140
73....50602

48 CFR

202....49860
204....49860
211....49860
212....49860, 49862
215....49862
219....49860, 49863
223....49864
225....49862
226....50504
232....49864
236....49860
237....49860
242....49860
243....49865
245....49860
248....49865
252 .....49860, 49862, 49864, 49865, 50504
253....49862
442....49866

49 CFR

325....49867
355....49867
356....49867
360....49867
365....49867
366....49867
367....49867
370....49867
371....49867
372....49867
373....49867
374....49867
375....49867
376....49867
377....49867
378....49867
379....49867
381....49867
383....49867
384....49867
385....49867
386....49867
387....49867
388....49867
389....49867
390....49867
391....49867
392....49867
393....49867
395....49867
396....49867
397....49867
398....49867
399....49867
Proposed Rules:
171....50147
173....50147
174....50147
175....50147
176....50147
177....50147
178....50147

50 CFR

17....50340
223....50350
660....49875
679....50576
Proposed Rules:
17....50383
222....50148
223....50148
229 .....49896, 50160, 50390
679....49908

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 OCTOBER 4, 2001

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Pennsylvania; published 8-20-01

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; published 8-20-01

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Various States; published 10-4-01

TRANSPORTATION DEPARTMENT

Ports and waterways safety:

Vessels arriving or departing U.S. ports; notification requirements; published 10-4-01

TRANSPORTATION DEPARTMENT

Airworthiness directives:

Eurocopter France; published 8-30-01

McDonnell Douglas; published 8-30-01

Pratt & Whitney; published 8-30-01

TREASURY DEPARTMENT

United States-Caribbean Basin Trade Partnership Act:

Brassieres; preferential treatment; published 10-4-01

TREASURY DEPARTMENT

Procedure and administration:

Unified partnership audit procedures; published 10-4-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Cranberries grown in—

Massachusetts et al.; comments due by 10-9-01; published 9-21-01

Dairy products:

Dairy plants approved for USDA inspection and grading service; general specifications; comments due by 10-12-01; published 8-13-01

AGRICULTURE DEPARTMENT

Fresh prunes grown in—

Washington and Oregon; comments due by 10-12-01; published 8-13-01

AGRICULTURE DEPARTMENT

Oranges, grapefruit, tangerines, and tangelos grown in Florida; comments due by 10-9-01; published 9-26-01

; comments due by 10-9-01; published 9-26-01

AGRICULTURE DEPARTMENT

Food labeling:

United States cattle and United States fresh beef products; definitions; labeling requirements; comments due by 10-9-01; published 8-7-01

Meat and poultry inspection:

Slovakia; addition to list of countries eligible to export meat and meat products to U.S.; comments due by 10-12-01; published 8-13-01

COMMERCE DEPARTMENT

Endangered and threatened species:

Critical habitat designations—

Southern resident killer whales; comments due by 10-12-01; published 8-13-01

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

West Coast salmon; comments due by 10-12-01; published 9-27-01

DEFENSE DEPARTMENT

Privacy Act; implementation; comments due by 10-9-01; published 8-9-01

; comments due by 10-9-01; published 8-9-01

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Trademarks for government products; comments due by 10-9-01; published 8-9-01

Privacy Act; implementation

National Imagery and Mapping Agency; comments due by 10-9-01; published 8-9-01

ENERGY DEPARTMENT

Physicians panel determinations on worker requests for assistance in filing for State workers' compensation benefits; guidelines; comments due by 10-9-01; published 9-7-01

; comments due by 10-9-01; published 9-7-01

ENERGY DEPARTMENT

Consumer products and commercial and industrial equipment; energy conservation program; meeting; comments due by 10-11-01; published 8-28-01

; comments due by 10-11-01; published 8-28-01

Consumer products; energy conservation program:

Energy conservation standards—

Central air conditioners and heat pumps; comments due by 10-9-01; published 7-25-01

Commercial unitary air conditioners and heat pumps; comments due by 10-12-01; published 8-17-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Flexible polyurethane foam fabrication operations; comments due by 10-9-01; published 8-8-01

Integrated iron and steel manufacturing facilities; comments due by 10-11-01; published 7-13-01

Air pollution control:

State operating permits programs—

Arizona; comments due by 10-10-01; published 9-10-01

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Various States; comments due by 10-10-01; published 9-10-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Various States; comments due by 10-10-01; published 9-10-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Alabama; comments due by 10-11-01; published 9-11-01

California; comments due by 10-9-01; published 8-7-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 10-12-01; published 9-12-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 10-12-01; published 9-12-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Colorado; comments due by 10-11-01; published 9-11-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Colorado; comments due by 10-11-01; published 9-11-01

Delaware; comments due by 10-9-01; published 9-7-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Maryland; comments due by 10-9-01; published 9-7-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Maryland; comments due by 10-9-01; published 9-7-01

New Jersey; comments due by 10-11-01; published 9-11-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and

promulgation; various States:
Pennsylvania; comments due by 10-9-01; published 9-6-01

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 10-9-01; published 9-6-01

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 10-10-01; published 9-10-01

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 10-10-01; published 9-10-01

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 10-11-01; published 9-11-01

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Texas; comments due by 10-9-01; published 9-7-01

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste program authorizations:
District of Columbia; comments due by 10-10-01; published 9-10-01

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste; program authorizatiions:
District of Columbia; comments due by 10-10-01; published 9-10-01

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 10-9-01; published 9-6-01

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 10-9-01; published 9-6-01

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 10-11-01; published 9-11-01

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 10-11-01; published 9-11-01
Water supply:
National primary drinking water regulations—
Public notification and consumer confidence report rules; revisions; comments due by 10-9-01; published 9-7-01

FEDERAL COMMUNICATIONS COMMISSION
Frequency allocations and radio treaty matters:
Mobile satellite service providers; flexible use of assigned spectrum over land-based transmitters; comments due by 10-11-01; published 9-13-01
New advanced mobile and fixed terrestrial wireless services; frequencies below 3 GHz; comments due by 10-11-01; published 9-13-01
Radio services, special:
Private land mobile services—
Low power operations in 450-470 MHz band; applications and licensing; comments due by 10-12-01; published 9-12-01

FEDERAL TRADE COMMISSION
Consumer information; safeguard standards; comments due by 10-9-01; published 8-7-01
; comments due by 10-9-01; published 8-7-01

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Trademarks for government products; comments due by 10-9-01; published 8-9-01

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Practice and procedure:
Federal National Mortgage Association and Federal Home Loan Mortgage Corporation—
Flood insurance; comments due by 10-12-01; published 9-12-01

INTERIOR DEPARTMENT
Endangered and threatened species:
Florida manatee; additional protection areas; comments due by 10-9-01; published 8-10-01
Hearings; comments due by 10-9-01; published 8-29-01

JUSTICE DEPARTMENT
Immigration:
Immigration examinations fee adjustment; comments due by 10-9-01; published 8-8-01

LIBRARY OF CONGRESS
Copyright arbitration royalty panel rules and procedures:
Digital performance of sound recordings; reasonable rates and terms determination; comments due by 10-12-01; published 9-27-01

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Trademarks for government products; comments due by 10-9-01; published 8-9-01

TRANSPORTATION DEPARTMENT
Drawbridge operations:
Massachusetts; comments due by 10-11-01; published 9-11-01
Ports and waterways safety:
Long Island Sound et al., CT and NY; safety zones; comments due by 10-9-01; published 8-7-01

TRANSPORTATION DEPARTMENT
Airworthiness directives:
Boeing; comments due by 10-9-01; published 8-23-01

TRANSPORTATION DEPARTMENT
Airworthiness directives:
Goodyear Tire & Rubber Co.; comments due by 10-12-01; published 9-4-01

TRANSPORTATION DEPARTMENT
Airworthiness directives:
McDonnell Douglas; comments due by 10-9-01; published 8-24-01
Rolls-Royce plc; comments due by 10-9-01; published 8-9-01

TRANSPORTATION DEPARTMENT
Airworthiness directives:
Rolls-Royce plc.; comments due by 10-9-01; published 8-10-01

TRANSPORTATION DEPARTMENT
Class E airspace; comments due by 10-9-01; published 8-23-01
; comments due by 10-9-01; published 8-23-01
VOR Federal airways and jet routes; comments due by 10-11-01; published 9-11-01
; comments due by 10-11-01; published 9-11-01

TRANSPORTATION DEPARTMENT
Processor-based signal and train control systems; development and use standards; comments due by 10-9-01; published 8-10-01
; comments due by 10-9-01; published 8-10-01

TRANSPORTATION DEPARTMENT
Clean Fuels Formula Grant Program; comments due by 10-12-01; published 8-28-01
; comments due by 10-12-01; published 8-28-01

TRANSPORTATION DEPARTMENT
Insurer reporting requirements:
Insurers required to file reports; list; comments due by 10-9-01; published 8-7-01

TRANSPORTATION DEPARTMENT
Hazardous materials:
Hazardous materials transportation—
Loading, unloading, and storage; comments due by 10-12-01; published 6-14-01

TREASURY DEPARTMENT

Dog and Cat Protection Act; implementation; prohibitions and penalties; comments due by 10-9-01; published 8-10-01

; comments due by 10-9-01; published 8-10-01

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Radiation-risk activities; presumptive service connection for certain diseases; comments due by 10-9-01; published 8-8-01

Correction; comments due by 10-9-01; published 8-31-01

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 1424/P.L. 107–45

To amend the Immigration and Nationality Act to provide permanent authority for the admission of ''S'' visa nonimmigrants. (Oct. 1, 2001; 115 Stat. 258)

Last List October 2, 2001

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: 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.